TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 849. 260

JAMES A. BRIGGS, EXECUTOR OF CHARLES M. BRIGGS, DECEASED, PLAINTIFF IN ERROR,

vs.

AMANDA M. WALKER AND OHIO VALLEY BANKING AND TRUST COMPANY, ADMINISTRATOR OF THE ESTATE OF A. L. SHOTWELL, DECEASED.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED MARCH 14, 1898.

(16,823.)

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INDEX.

	Original.	Print.
Caption	1	1
Transcript from Jefferson circuit court	2	1
Caption	2	1
Order filing amended and supplemental answer and cross-petition	2	1
Amended and supplemental answer and cross-petition of Jas. A. Briggs, executor	3	2
Order filing answer	4	2
Order filing exhibit	4	2
Answer, counter-claim, and cross-petition of Amanda M. Walker	4	2
Exhibit "A"—Claim of Amanda M. Walker	8	4
Order filing answers	12	6
Answer of James A. Briggs, executor, to counter-claim and cross-petition of Amanda M. Walker	12	7

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	Original.	Print.
Order filing reply	15	8
Reply of Amanda M. Walker to answer of James A. Briggs, executor, and order filing same	15	8
Order filing answer, counter-claim, and exhibits	16	9
Answer and counter-claim of Shotwell's administrator	16	9
Exhibits, notes, and protests, &c.	21	11
Exhibit "Statement"	29	16
Exhibit Affidavit of B. G. Witt	30	17
Order filing answer	35	19
Answer of James A. Briggs, executor, to answer and counter-claim of A. L. Shotwell's administrator	35	20
Order filing reply	38	21
Reply of Amanda M. Walker to answer of Ohio Valley Banking and Trust Company, administrator	38	21
Orders: Set at rules; motion to file amended answer and exhibit to cross-petition of A. L. Shotwell's administrator	42	23
Order assigning motion; motion to file amended answer to cross-petition of Amanda M. Walker; motion assigned	42	24
Order filing statement	43	24
Agreed order as to statement of James A. Briggs	43	24
Order granting motion to file amended answers	43	24
Amended answer of J. A. Briggs, executor, to cross-petition of A. L. Shotwell's administrator	43	24
Amended answer of J. A. Briggs, executor, to cross-petition of Amanda M. Walker	53	29
Exhibit "A," filed with amended answer of J. A. Briggs, executor—Record in Briggs, executor, &c., *vs.* United States, No. 16262, in Court of Claims	62	33
Affidavit of Alfred L. Shotwell	62	34
S. B. Shotwell	65	36
Deposition of A. L. Shotwell	68	37
A. L. Shotwell	83	45
Affidavit of Sam'l J. Walker	93	51
Order filing demurrer and to submit on demurrer	95	52
Demurrer of Amanda M. Walker and O. V. B. & T. Co., administrator, to amended answer of James Briggs, executor	96	52
Order sustaining demurrer to amended answer of James A. Briggs, executor	96	53
Order filing statement as to signature	96	53
Agreed order that statement should be read as deposition	97	53
Statement of James A. Briggs	97	53
Order filing opinion	97	53
Opinion	98	53
Judgment	99	54
Motion to amend judgment and motion overruled	101	55
Order granting appeal	102	56
Evidence	102	56
Deposition of Amanda M. Walker	103	56
Charles M. Walker	109	60
B. G. Witt	113	62
Mrs. A. A. Conway	114	63
R. T. Durrett	120	66
Order filing assignment of errors and schedule	122	67

	Original.	Print.
Assignment of errors	123	67
Schedule of record	124	68
Certificate of clerk	128	70
Statement on transcript	128	70
Order granting leave to print	129	70
Order granting leave to file brief	129	71
Order granting cross-appeal	130	71
Order granting cross-appeal and continuing cause for oral argument	130	71
Order filing supersedeas bond and supersedeas	130	71
Supersedeas bond	130	72
Supersedeas	136	75
Order of submission	138	76
Order setting aside submission and continuing cause for oral argument	138	76
Ordered that the order setting aside submission and passing same for oral argument be set aside and said cause stand submitted	139	77
Judgment	139	77
Opinion by Judge Hazelrigg	140	77
Order extending time for filing petition for rehearing	150	82
Order submitting petition for rehearing	150	83
Petition for rehearing	150	83
Order overruling petition for rehearing	160	88
Petition for writ of error and assignment of errors	161	88
Writ of error	165	90
Supersedeas bond	167	91
Supersedeas bond	168	92
Supersedeas bond	170	93
Clerk's certificate	173	94
Citation and service	174	94

1 COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the court of appeals held in and for the Commonwealth of Kentucky, at the capitol, in the city of Frankfort, on the fourth day of December, A. D. 1897, Joseph H. Lewis, chief justice, and Associate Justices James H. Hazelrigg, Thomas N. Paynter, and N. R. Burnam, sitting.

JAMES A. BRIGGS, Executor of the Will of Charles M. Briggs, Deceased, Appellant,
vs.
AMANDA M. WALKER and OHIO VALLEY BANKING & TRUST Company, Administrator of the Estate of A. L. Shotwell, Deceased, Appellee.

Be it remembered that heretofore, to wit, on the 10th day of October, A. D. 1895, the appellant, by counsel, filed in the office of the clerk of the Kentucky court of appeals a transcript of record in words and figures following, to wit:

2 STATE OF KENTUCKY,
Jefferson County.

Pleas before the Honorable I. W. Edwards, judge of the Jefferson circuit court, chancery division, at the court-house, in Louisville, Ky., on the dates hereinafter mentioned.

HENRY A. McLEMORE, Guardian of John Briggs McLemore and Lizzie R. McLemore; John Briggs McLemore, Lizzie R. McLemore, by Their Next Friend, H. A. McLemore, Plaintiffs,
vs.
JAMES A. BRIGGS, JOSEPHINE BRIGGS, CHARLES M. Briggs, Herbert Grasty, Emily Grasty, Defendants.
31308.

Be it known that heretofore, to wit, at a court held for the Jefferson circuit court, chancery division, on the 21st day of May, 1894—

Came James A. Briggs, ex'or of Charles M. Briggs, by Gibson, Marshall & Lochre, attorneys, and filed his amended and supplemental answer and cross-petition herein.

Said amended and supplemental answer and cross-petition *is* as follows, to wit:

3 Chancery Division.

McLEMORE, Guardian, Plaintiff,
vs.
BRIGGS, Executor, Defendant.

Amended and Supplemental Answer and Cross-petition of James A. Briggs, Executor of the Will of Charles M. Briggs, Deceased.

The defendant, James A. Briggs, executor of the will of Charles M. Briggs, deceased, for amended and supplemental answer herein, says that since the last settlement of his accounts herein he has succeeded in collecting from the United States Government the cotton claim referred to in his previous settlements herein. He says that one Amanda M. Walker and the Ohio Valley Banking & Trust Company, as administrator of the estate of A. L. Shotwell, deceased, are asserting some claim against the money so collected by him from the United States Government, and with a view to a final and complete settlement of his accounts he now asks that this case be referred to the commissioner of this court for that purpose, and that said Amanda M. Walker and said Ohio Valley Banking & Trust Company, administrator of A. L. Shotwell, be made parties defendant hereto and be required to set up and assert whatever claims they have in the premises in this action.

Wherefore, &c.

GIBSON, MARSHALL & LOCHRE,
Attorneys for Defendant.

4 At a court held on the 8th day of October, 1894—

Came Amanda M. Walker, by Helm & Bruce, counsel, and filed her answer to the cross-petition of James A. Briggs, ex'or, &c., which answer is made a counter claim and cross-petition, notice of the filing of same being waived, and also filed Exhibit "A" therewith.

Said answer, counter-claim, and cross-petition *is* as follows, to wit:

Jefferson Circuit Court, Chancery Division.

H. A. McLEMORE, Guardian, &c., Plaintiff,
vs.
JAS. A. BRIGGS, Executor, &c., Defendants.
} Answer, Counter-claim, and Cross-petition of Amanda M. Walker.

Amanda M. Walker, defendant on the cross-petition of Jas. A. Briggs, executor of the will of Charles M. Briggs, deceased, in the above-entitled action, for answer to said cross-petition and by way of counter-claim against said James A. Briggs, executor aforesaid, and as a cross-petition against the Ohio Valley Banking & Trust Company, administrator of the estate of A. L. Shotwell, deceased, says:

Heretofore, to wit, on April 18th, 1862, the said Charles M. Briggs, now deceased, in consideration of the sale and transfere made to him by C. S. Morehead of all the cotton on his two plantations near Eggspoint, in the State of Mississippi, did in writing assume and agree to pay to Samuel J. Walker the sum of
5 $40,000.00 owing to said Walker by said C. S. Morehead; but upon the condition that he, the said Briggs, should realize a sufficient amount from any cotton on or from said plantations, or the proceeds of same, to pay the amount aforesaid, together with about $25,000.00 due to said Bruggs himself from C. S. Morehead, and also about $10,000.00, more or less, being a claim in favor of A. L. Shotwell, so far as said Shotwell might establish the said claim; but in case the said Briggs should not realize sufficient to pay all of said claims of the amounts above named in full, then he agreed in said writing to pay or divide the amount that might be realized from said cotton proportionately or *pro rata* according to the respective amounts named to the parties aforesaid, first, however, paying and refunding any moneys which might be paid by the respective parties for or on account of expenses appertaining to same; and, in case more should be realized than sufficient to pay said amounts, with interest thereon to the time of realization of payment, that any surplus was to be divided, one-half to said Shotwell and said Briggs jointly for their services, and the remaining one-half to said Samuel J. Walker; but no other consideration was to be paid to said Shotwell or to said Briggs for their said services.

A copy of the said instrument in writing is embraced in the proof of the debt hereinafter referred to and filed with this pleading, and the original of same will be produced in court if called for by any party interested in the same.

Subsequent to the execution of said writing the said
6 Samuel J. Walker did, in writing, assign the same and all benefits thereunder to this defendant, Amanda M. Walker, for her sole use and benefit, and she is now the owner and holder thereof and entitled to all benefits thereunder.

Subsequent to the execution of said instrument the cotton referred to therein was seized by the United States of America, and on account of the said seizure the said Charles M. Briggs made a claim and demand upon the said United States for payment to him for said cotton, or damages for the seizure thereof, and such proceedings were had upon said claim that finally, after the death of said Charles M. Briggs and after the appointment and qualification of Jas. A. Briggs as the executor of his will, the said United States did, on or about the — day of March, 1894, pay, either to said Jas. A. Briggs, as executor, or to his attorneys, the sum of $88,000.00 in settlement of the demand of said Briggs against the said United States on account of said cotton.

Defendant is informed, however, that one-half of the said amount was paid to the attorneys who represented said Briggs or his executor in the prosecution of said claim; but defendant states that there is now in the hands of said James A. Briggs, executor, at least the sum of $44,000.00 as the proceeds of said cotton.

Defendant says she does not know whether all or any part of the $25,000.00 referred to in the said writing as due to said Charles M. Briggs himself from C. S. Morehead was ever paid, nor does she know whether or not the claim therein referred to as existing in favor of A. L. Shotwell was a valid claim or has ever been paid in whole or in part or what was the amount thereof; and she hereby calls upon said Jas. A. Briggs, as executor of the will of said Chas. M. Briggs, and upon the Ohio Valley Banking and Trust Company, which is the administrator of the estate of A. L. Shotwell, deceased, to assert herein whatever claim they may have on account of the alleged items of indebtedness referred to in said instrument as then being asserted by them; but defendant says that no part of the $40,000.00 referred to in said instrument as due to Samuel J. Walker, and which the said Charles M. Briggs did by said instrument promise and agree to pay, has ever been paid and the whole thereof is still due, and defendant is entitled to receive out of the moneys in the hands of said James A. Briggs, executor of the will of Chas. M. Briggs, deceased, the said sum of $40,000.00, with interest thereon from April 18th, 1862, if the other claims mentioned in said instrument as in favor of said Chas. M. Briggs and said A. L. Shotwell were not valid claims or have been paid; but in any event defendant is entitled out of said funds to recover such proportion thereof as the amount due to her as aforesaid bears to the aggregate of the three claims mentioned in said instrument as the same now exist and are unpaid.

7

Defendant further states that heretofore, to wit, on April 7th, 1894, she made a demand upon said James A. Briggs, executor aforesaid, for the payment of her claim, accompanied by proofs of the same, consisting of her affidavit and the affidavit of her son, Charles M. Walker, service of which was acknowledged by said Briggs, executor, by writing endorsed thereon, and the said proof of debt is hereby filed herewith as part hereof, marked "Exhibit A."

8

Wherefore plaintiff prays for judgment against the said James A. Briggs, executor of the will of Chas. M. Briggs, deceased, for the sum of $40,000.00, with interest thereon from April 18th, 1862, until paid, or, if she is not entitled to that sum, then for judgment for such proportion of the sum of $44,000.00 now in the hand- of said executor as the amount due to — as aforesaid shall appear to bear to the aggregate of the three claims mentioned in the aforesaid instrument now due and unpaid. She further prays for her costs herein expended and for all proper relief.

CHARLES M. WALKER,
HELM & BRUCE,
Att'ys for Defendant Amanda J. Walker.

Exhibit "A" filed with foregoing answer, counter claim, and cross-petition of A. M. Walker is as follows, to wit:

Claim of Amanda M. Walker, of Chicago, Illinois, against James A. Briggs, Executor of the Will of Charles M. Briggs, Deceased.

Amanda M. Walker, being first duly sworn, says that on April 18th, 1862, Charles M. Briggs, now deceased, executed and delivered to affiant's late husband, Samuel J. Walker, an instrument in writing in the following terms, to wit:

"In consideration of the sale and transfer this day made to me by C. S. Morehead of all the cotton on his two plantations,
9 near Eggspoint in the State of Mississippi, as specified in said sale and transfer in writing, I hereby assume and agree to pay to Samuel J. Walker, the sum of forty thousand dollars due and owing to said Walker, by said C. S. Morehead, upon conditions, however, that I realize sufficient amount from any cotton on or from said plantations or proceeds of same, together with about twenty-five thousand dollars due me from said C. S. Morehead for moneys advanced and liability for him as surety, also about ten thousand dollars, more or less, being a claim of A. S. Shotwell, as he may hereafter establish against said C. S. Morehead, but in case I should not realize sufficient to pay all of said claims or amounts above named in full, then I am to pay or divide the amount that may be realized from said cotton proportionately or *pro rate* according to the respective amounts, named to the parties above named, first, however, paying and refunding any monies paid by the respective parties for or account of expenses pertaining to same, and in case more should be realized than sufficient to pay said amounts with interest thereon, to the time of realization and payment, then any surplus to be divided, one-half to said Shotwell and (C. M. Briggs) jointly for any services, and the remaining one-half to said Samuel J. Walker, but no other consideration to be paid to said Shotwell and Briggs for their service.

C. M. BRIGGS.

April 18th, 1862."

Subsequent to the execution of said instrument the said
10 Samuel J. Walker endorsed the same in blank and transferred it to the affiant, Amanda M. Walker, to take the benefits thereunder for her sole use and benefit, and said instrument has ever since been in possession of affiant, and is now in her possession, and the rights and benefits thereunder are *due* to her.

The original of said instrument and assignment has been exhibited to Mr. Charles H. Gibson, the attorney for the aforesaid executor, and will be produced again before the said executor himself if he so desires.

Affiant further says that since the death of said Charles M. Briggs and the qualification of said executor the latter in his capacity as executor has collected and realized for the estate of said Charles M. Briggs from the cotton referred to in the foregoing instrument of writing, or from its proceeds, the sum of eighty-eight thousand ($88,000) dollars, of which sum he has paid to the attorneys-

at-law for collecting the same the sum of fourty-four thousand (44,000.00) dollars, and he has now in his hands as executor the sum of fourty-four thousand (44,000.00) dollars.

Affiant says she is entitled, under the aforesaid written agreement and the assignment thereof, to her eight-fifteenths of the aforesaid sum in the hands of said executor. She further says that her said demand is just and has never been paid in whole or in part, and that there is no offset or discount against the same or any usury therein.

AMANDA M. WALKER.

STATE OF ILLINOIS, }
County of Cook. }

11 I, J. N. Swartz, a notary public in and for the State and county aforesaid, do hereby certify that on this day the foregoing affidavit was subscribed and sworn to before me by Amanda M. Walker.

Witness my official seal and signature this 3rd day of April, 1894.

[SEAL.] J. N. SWARTZ,
Notary Public.

Claim of Amanda M. Walker against the Estate of Charles M. Briggs.

Affiant, Charles M. Walker, says he is the son of Amanda M. Walker, who has a demand against the estate of Charles M. Briggs, and to whose affidavit proving such demand this affidavit is hereby annexed, and that he is familiar with the signature of Samuel J. Walker, the person named in the written agreement copied into the said affidavit of Amanda M. Walker, said Samuel J. Walker having been the father of the affiant, and affiant knows that the endorsement of said Samuel J. Walker on the said original agreement is his genuine signature, and that the same was by him delivered to the said Amanda M. Walker and has been ever since retained by her in her possession as her property and is in her possession as such now.

CHARLES M. WALKER.

STATE OF ILLINOIS, }
County of Cook. }

I, J. N. Swartz, a notary public in and for the State and county aforesaid, do hereby certify that the foregoing affidavit of
12 Charles M. Walker was this day subscribed and sworn to before me by him.

Witness my official seal and signature this 3rd day of April, 1894.

[SEAL.] J. N. SWARTZ,
Notary Public.

At a court held on the 21st day of January, 1895—

Came defendant, James A. Briggs, executor of will of Chas. M. Briggs, deceased, by Gibson and Marshall, attorneys, and filed his

answer to the answer and counter-claim of A. L. Shotwell, administrator, herein.

Came again said defendant and filed his answer to the counter-claim and cross-petition of Amanda M. Walker herein.

Said answer of James A. Briggs, ex'or, is as follows, to wit:

Chancery Division.

H. A. McLEMORE, Guardian, &c., Plaintiff,
vs.
JAMES A. BRIGGS, Executor, &c., Defendants.

Answer of James A. Briggs, Executor of Charles M. Briggs' Will, to the Counter-claim and Cross-petition of Amanda M. Walker.

The defendant, James A. Briggs, executor of the will of Charles M. Briggs, for answer to the counter-claim and cross-petition of Amanda M. Walker herein says:

He has no knowledge or information sufficient to form a belief as to whether his testator, Charles M. Briggs, did, on the 18th day of April, 1862, or at any other time, in consideration of a sale
13 and transfer made to him by C. S. Morehead of all the cotton on his two plantations near Eggspoint, Mississippi, assume or agree in writing to pay Samuel J. Walker the sum of $40,000 or any other sum, or whether said sum or any part of it was owing to said Walker by said Morehead, or whether the same or any part of it, if ever owing, is still owing.

He has no knowledge or information sufficient to form a belief whether his said testator, Charles M. Briggs, ever executed or entered into the agreement referred to in the counter-claim and cross-petition of Amanda M. Walker, and a copy of which agreement is filed with said counter-claim and cross-petition. He has no knowledge or information sufficient to form a belief as to whether the said paper is the act and deed of his said testator, or whether he ever made any of the agreements recited therein, and therefore demands proof of the same.

He admits that C. S. Morehead did, in April, 1862, by writing signed by him, assign and transfer to said testator, Charles M. Briggs, all of the cotton then on his (said Morehead's) *pal*ntations near Eggspoint, Mississippi; but he says the said assignment and transfer was made to said testator alone and to no one else, and this defendant has no knowledge or information sufficient to form a belief that any one else than said testator had any interest in said cotton or any right to share in the proceeds of the same, and he therefore demands strict proof of the right of Amanda M. Walker to share in the proceeds of said sale.

He has no knowledge or information sufficient to form a belief whether the said instrument of writing purporting to be
14 signed by this defendant's testator was by him delivered to said Samuel J. Walker, or whether the same or any benefit thereunder was by said Walker assigned to Amanda M. Walker, or

whether she is now or has ever been the holder thereof or entitled to any benefits thereunder.

He admits that the cotton referred to in the transfer and assignment made, as aforesaid, by C. S. Morehead to this defendant's testator was seized by the United States and sold, and that claim was made by this defendant against the United States for the proceeds of the said cotton, this defendant basing his claim on the assignment and transfer made by said Morehead to this defendant's testator, and that after many years of litigation and trouble this defendant succeeded, in his capacity as executor, in recovering and receiving from the United States the sum of $88,000.

He says that his testator prior to his death had employed counsel to prosecute said claim against the United States, and had agreed to pay said counsel for their services a contingent fee equal to one-half the amount they might recover for him on said claim, and said agreement so made by said testator was renewed by this defendant as executor, and in pursuance to said agreement he paid said counsel out of the amount received by him the sum of forty-four thousand dollars, leaving in this defendant's hands the sum of $44,000, from which is to be deducted his commissions on the sum of $88,000 and expenses incurred in collecting the same and which he holds subject to such order and judgement as may be rendered herein respecting the same.

15 He says it is not true that Amanda M. Walker is for any reason entitled to recover or receive any portion of the said sum in his hands, and he prays that the counter-claim and cross-petition of said Amanda M. Walker may be dismissed.

GIBSON & MARSHALL,
Attorneys for Defendant.

J. A. Briggs, being duly sworn, says the statements of the foregoing answer are true as he verily believes.

J. A. BRIGGS.

Subscribed and sworn to before me by J. A. Briggs this January 19th, 1895.

[SEAL.] WILL A. COOKE,
Notary Public.

At a court held on the 4th day of February, 1895—

Came Amanda M. Walker, by Helm & Bruce, attorneys, and filed *his* reply herein, notice being waived.

Said reply is as follows, to wit:

Jefferson Circuit Court, Chancery Division.

H. A. McLEMORE, Guardian, &c., Plaintiff,
vs.
JAMES A. BRIGGS, Executor, &c., Defendant.

Reply of Amanda M. Walker to the Answer of James A. Briggs, Executor.

Defendant and cross-plaintiff, Amanda M. Walker, for reply to the answer of James A. Briggs, executor of the will of Charles M. Briggs,

has no knowledge or information sufficient to form a belief
16 as to how many years of litigation or trouble defendant had before succeeding in the collection of the money referred to from the United States Government.

She denies that there is to be deducted from the amount in defendant's hands commissions on the sum of $88,000 or on any greater sum than on $44,000.

CHARLES M. WALKER AND
HELM & BRUCE,
Att'ys for Amanda M. Walker.

At a court held on the 19th day of October, 1894—

Came A. L. Shotwell's adm'r, by Vance and Dixon, counsel, and filed *its* answer and counter-claim herein and exhibits, notice of the filing of same being waived by C. M. Briggs' ex'or, by Gibson, Marshall and Lochre, counsel.

Said answer of A. L. Shotwell's adm'r is as follows, to wit:

Jefferson Circuit Court, Chancery Division.

H. A. McLEMORE, Guardian, &c., Plaintiff,
vs.
JAMES A. BRIGGS, Ex'or of Charles M. Briggs, Dec'd, Defendant.

Ans. & Counter-claim of Shotwell's Adm'r.

The Ohio Valley Banking and Trust Company, administrator of the estate of A. L. Shotwell, dec'd, for its answer to the cross-petition of James A. Briggs, executor of the last will of Charles M. Briggs, dec'd, says that on the 18 day of April, 1862, C. S. Morehead, then a citizen of this State, but now dead, was indebted to A. L. Shotwell & Son in divers sums, in all amounting, with interest, to seven thousand two hundred and fifteen and $\frac{25}{100}$ dollars, as follows:

17 (*a.*) One bill of exchange drawn by C. S. Morehead upon and accepted by himself and in favor of A. L. Shotwell & Son for the sum of three thousand dollars, dated Oct. 1, 1859, and payable six months after date, at office of J. J. Person & Co., New Orleans, La.

(*b.*) One bill of exchange for fifteen hundred and fifty-two and no $\frac{}{100}$ dollars, drawn by C. S. Morehead upon and accepted by himself and endorsed by A. L. Shotwell & Son, dated Nov. 15, 1860, and payable four months after date. The said bill of exchange when due was duly protested for non-payment and was afterwards paid by said A. L. Shotwell & Son.

c. Three bills of exchange drawn by C. S. Morehead upon and accepted by himself and in favor of A. L. Shotwell & Son, each for the sum of (709.60) seven hundred and nine and $\frac{60}{100}$ dollars, dated March 18, 1861, and payable seven months after date, at the office of J. J. Person & Co., New Orleans, La.

The said Morehead, on the 18 day of April, 1862, transferred to C. M. Briggs a large quantity of cotton, then on his *pal*ntations in the State of Mississippi, in trust for the payment of certain debts

owing by him, said Morehead, to said Briggs, Samuel J. Walker, and A. L. Shotwell, and the said Briggs accepted said trust and agreed to sell and dispose of said cotton and with the proceeds thereof to pay said debts, or so much thereof, ratably, as the said proceeds might suffice to pay, and of date said 18 day of April, 1862, said Briggs made and delivered to said Samuel J. Walker his certain writing evidencing the said trust and its terms; which said
18 writing is in the words and figures following, viz:

"In consideration of the sale and transfer this day made me by C. S. Morehead of all the cotton on his two plantations, near Eggspoint in the State of Mississippi as specified in said sale and transfer in writing, I hereby assume and agree to pay Samuel J. Walker, the sum of forty thousand dollars due and owing to said Walker by said C. S. Morehead, upon conditions, however, that I realize sufficient amount from any cotton on or from said plantation or proceed- of same, together with about twenty-five thousand dollars due me from said C. S. Morehead for moneys advanced and liability for him as surety, also about ten thousand dollars more or less, being a claim of A. L. Shotwell as he may hereafter establish against said C. S. Morehead, but in case I should not realize sufficient to pay all said claims or amounts above named in full, then I am to pay or divide the amount that may be realized from said cotton proportionately or *pro rate* according to the respective amounts, named to the parties above named.

First, however, paying and refunding any moneys paid by the respective parties for or on account of expenses pertaining to same, and in case more should be realized than sufficient to pay said amounts with interest thereon, to the time of realization and payment, then any surplus to be divided, one-half to said Shotwell and C. M. Briggs jointly for any services, and the remaining one-half to said Samuel J. Walker, but no other consideration to be paid to said Shotwell and Briggs for their service.

April 18th, 1862.

C. M. BRIGGS."

19 The said writing is in the possession of Mrs. Amanda M. Walker, widow and assignee of said Samuel J. Walker, or of her attorneys, so that defendant cannot file it herewith.

Of the liabilities of C. M. Briggs for him, said Morehead, as surety, in the said writing mentioned were certain notes held by the Commercial bank at Versailles, in said State, which were afterwards paid by said Briggs and in which A. L. Shotwell was jointly bound with said Briggs as surety. Some controversy having arisen between said Shotwell and Briggs as to the extent of Shotwell's liability to Briggs on account thereof, "the matters in difference between them touching such suretyship" was submitted by them in writing to the arbitration of Thomas W. Gibson and Wm. R. Thompson, and in case they should be unable to agree "they to choose an umpire, whose decision should be final." Said submission was of date Dec. 2, 1869. The said arbitrators being unable to agree, in writing dated March 3, 1870, selected P. B. Muir as their umpire, who made

his award in writing "that Shotwell ought to pay Briggs (2,000) two thousand dollars, with interest at the rate of six per cent. per annum from the 29th of Oct., 1867, till paid."

The said award was afterwards performed by said Shotwell by the payment of said sum of two thousand dollars and interest, and by such payment the interest of said Briggs in the proceeds of said letter was diminished and that of said Shotwell was increased by the sum of two thousand two hundred and seventy dollars.

No part of the said sums has been paid by or for said
20 Morehead, nor by or for the said Briggs, but the same is still due and unpaid.

The son of A. L. Shotwell, of the firm of A. L. Shotwell & Son, was —— Shotwell, and departed this life in the year 18—, and before the said A. L. Shotwell, and the said claims have come to the hands of this defendant as administrator of the estate of A. L. Shotwell, dec'd.

Defendant files herewith as part hereof an account of said debts, duly verified, and also the said bills of exchange and copy of protest and copies of the said submission and award herein mentioned, and also receipt of C. M. Briggs to the amount of said award.

Since the decease of said C. M. Briggs, as defendant is advised and alleges, his executor, the defendant, James A. Briggs, has collected and received on account of said cotton and for the proceeds thereof the sum of (88,000) eighty-eight thousand dollars, and by reason of the facts herein alleged this defendant is entitled to have and receive thereof the amount of its said claim or its due proportion thereof.

Defendant pleads these facts as a counter-claim against James A. Briggs, executor of C. M. Briggs, and prays that he be adjudged to pay its said claim from the said fund, and for all proper relief.

S. B. & R. D. VANCE,
W. B. DIXON,
Att'ys for O. V. B. & T. Co., Adm'r of Shotwell.

STATE OF KENTUCKY, }
21 *Henderson County.* }

The affiant, B. G. Witt, says he is the cashier and general business manager of the Ohio Valley Banking & Trust Company, and that he believes the statements of the foregoing answer are true.

B. G. WITT.

Sworn to before me by B. G. Witt this Oct. 12, 1894.
[SEAL.]
WM. H. WITT,
N. P., H. Co., Ky.

Said exhibits are as follows, to wit:

$3,000.00. LOUISVILLE, KENTUCKY, *October 1st*, 1859.

The drawers and endorsers waive notice of non-acceptance of this bill and protest to be evidence of presentment.

Six months after date of this first of exchange (second of the same tenor and date unpaid) pay to the order of A. L. Shotwell & Son,

at office of J. J. Person & Co., New Orleans, La., three thousand dollars, value received.

C. S. MOREHEAD.

C. S. Morehead, Louisville, Ky.

Endorsed on face as follows: Paid by A. L. S. & Son. Accepted. C. S. Morehead.

Endorsed as follows: C. S. Morehead. 3,000. 1 April. A. L. Shotwell & Son. Pay R. J. Palfrey, Esq., cash or order. H. S. Julian, cas.

$1,552.40. LOUISVILLE, KENTUCKY, *Nov. 15th*, 1860.

The drawers and endorsers waive notice of non-acceptance and non-payment of this bill and protest to be evidence of presentment.

22 Four months after date of this first of exchange (second of the same tenor and date unpaid) pay to the order of ourselves fifteen hundred and fifty-two $\frac{40}{100}$ dollars, value received.

C. S. MOREHEAD.

To C. S. Morehead, Esq., at Louisville, Ky.

Endorsed on face as follows: C. S. Morehead. 18 Mar., 1,552.40. A. S. Shotwell & Son. P. Scott. Pay to W. H. Davidson, Esq., cashier, or order.

COMMONWEALTH OF KENTUCKY, }
Jefferson County, } *ss*:

Be it known that at the request of W. H. Davidson, cash., I, William G. Fullerston, a notary public in and for said county, duly commissioned and sworn, and dwelling in the city of Louisville, in said county, did, on the eighteenth day of March, anno Domini eighteen hundred and sixty-one, present the original draft, of which a true copy is on the reverse hereof written, to C. J. Morehead, and then and there demanded a payment of said draft, which he refused, saying I have no money, and said draft was dishonored.

Wherefore, at the request of W. H. Davidson, cash., I have protested, and by these presents do publicly and solemnly protest, against the drawer, endorsers, acceptor, and all others therein concerned for all exchange, re-exchange, damages, costs, charges, and interests suffered and sustained and to be suffered and sustained by reason or in consequence of the non-payment of said draft, having given proper notice of said protest to all parties therein con-
23 cerned, and make due record in my office as required by law.

Thus done and protested and my notarial seal affixed in said city of Louisville, on the day and year first above written.

[SEAL.] W. G. FULLERTON,
Notary Public.

Endorsed as follows, to wit:

$1,552.40. LOUISVILLE, KENTUCKY, *Nov.* 15, 1860.

The drawers and endorsers waive notice of non-acceptance and non-payment of this bill and protest to be evidence of presentment.

Four months after date of this first of exchange (second of the same tenor and date unpaid) pay to the order of ourselves fifteen hundred and fifty-two $\frac{40}{100}$ dollars, value received.

C. J. MOREHEAD.

To C. J. Morehead, Esq., at Louisville, Ky.

Endorsed: A. L. Shotwell & Son. P. Scott. Pay to W. H. Davidson, Esq., cashier, or order. James A. Grinstead, cash.

$709.60. LOUISVILLE, KENTUCKY, *March 18th*, 1861.

The drawers and endorsers waive notice of non-acceptance and non-payment of this bill and protest to be evidence of presentment.

Seven months after date of this first of exchange (second of the same tenor and date unpaid) pay to the order of A. L. Shotwell & Son, at office J. J. Person & Co., New Orleans, La., seven hundred and nine $\frac{60}{100}$ dollars, value received.

C. S. MOREHEAD.

Mr. C. S. Morehead, at Louisville, Ky.

Endorsed on face as follows: C. S. Morehead.
First.

$709.60. LOUISVILLE, KENTUCKY, *March 18th*, 1861.

24 The drawers and endorsers waive notice of non-acceptance and *nin*-payment of this bill and protest to be evidence of presentment.

Seven months after date of this second exchange (first of the same tenor and date unpaid) pay to the order of A. L. Shotwell & Son, at office J. J. Person & Co., New Orleans, La., seven hundred and nine $\frac{00}{100}$ dollars, value received.

C. S. MOREHEAD.

To Mr. C. S. Morehead, at Louisville, Ky.

Endorsed on face as follows: First accepted. C. S. M.
Second.

$709.60. LOUISVILLE, KENTUCKY, *March 18th*, 1861.

The drawers and endorsers waive notice of non-acceptance and non-payment of this bill and protest to be evidence of presentment.

Seven months after date of this first of exchange (second of the same tenor and date unpaid) pay to the order of A. L. Shotwell & Son, at office J. J. Person & Co., New Orleans, La., seven hundred and nine $\frac{60}{100}$ dollars, value received.

C. S. MOREHEAD.

To Mr. C. *L.* Morehead, at Louisville, Ky.

Endorsed on face as follows: C. S. Morehead.
First.

$709.60. LOUISVILLE, KENTUCKY, *March 18th*, 1861.

The drawers and endorsers waive notice of non-acceptance and non-payment of this bill and protest to be evidence of presentment.

Seven months after date of this second of exchange (first of
25 the same tenor and date unpaid) pay to the order of A. L. Shotwell & Son, at office J. J. Person & Co., New Orleans, La., seven hundred and nine $\frac{60}{100}$ dollars, value received.

C. S. MOREHEAD.

To Mr. C. S. Morehead, at Louisville, Ky.

Second.
Endorsed on face as follows: First accepted. C. S. M.

$709.60. LOUISVILLE, KENTUCKY, *March* 18, 1861.

The drawers and endorsers waive notice of non-acceptance and non-payment of this bill and protest to be evidence of presentment.
Seven months after date of this first of exchange (second of the same tenor and date unpaid) pay to the order of A. L. Shotwell & Son, at office J. J. Person & Co., New Orleans, La., seven hundred and nine $\frac{60}{100}$ dollars, value received.

C. S. MOREHEAD.

To Mr. C. S. Morehead, at Louisville, Ky.

First. Endorsed on face as follows: C. S. Morehead.

$709.60. LOUISVILLE, KENTUCKY, *March 18th*, 1861.

The drawers and endorsers waive notice of non-acceptance and non-payment of this bill and protest to be evidence of presentment.
Seven months after date of this second of exchange (first of the same tenor and date unpaid) pay to the order of A. L. Shotwell & Son, at office J. J. Person & Co., New Orleans, La., seven hundred and nine $\frac{60}{100}$ dollars, value received.

C. S. MOREHEAD.

To Mr. C. S. Morehead, at Louisville, Ky.

Endorsed on face as follows: First accepted. C. S. M. Second.

26 We, the undersigned, C. M. Briggs and A. L. Shotwell, agree to submit the matters in difference between us touching our suretyship or connected therewith for Chas. S. Morehead upon two promissory notes to the arbitration of Thos. W. Gibson and Wm. R. Thompson, and in case they are unable to agree they to choose an umpire, whose decision shall be final, and we mutually agree and bind ourselves to perform the award of said arbitrators or said umpire.
Dec. 2, 1869.

C. M. BRIGGS.
A. L. SHOTWELL.

(Stamp.)
A true copy.

We, W. R. Thompson and Thos. W. Gibson, the arbitrators named within, after an investigation of the matters submitted to

us, fail to agree, and consequently unite in the selection of P. B. Muir, Esqr., as umpire to settle said matters of difference.

March 3rd, 1870.

(Signed) THOS. W. GIBSON.
W. R. THOMPSON.

My judgment is that Shotwell ought to pay Briggs ($2,000) two thousand dollars, with interest at the rate of six per cent. per annum from the 29th of October, 1867, till paid. The residue of the account not having been assented to by Shotwell, he is not legally chargeable therewith. The parties must pay each his own costs incurred in the arbitration, the charge of the umpire to be paid jointly.

P. B. MUIR.

A true copy.

LOUISVILLE, *April* 19, 1870.

Received of A. L. Shotwell his note for nine hundred and fifty (950) dollars, due within thirty days from date, and one
27 thousand and fifty (1,050) dollars in currency, which currency was raised in part on an acceptance drawn by S. B. Shotwell on A. L. Shotwell and Son, Caseyville, Ky., endorsed by A. L. Shotwell and C. M. Briggs. When these two pieces of paper are paid by said A. L. Shotwell, then this award will be complied with in full by s-d Shotwell and is to be held null and void and of no effect.

C. M. BRIGGS.

Endorsed as follows: Settlement with C. M. Briggs on ac. C. S. Morehead endorsement.

CHICAGO, ILLS., *Dec. 3rd*, 1875.

A. L. Shotwell, Esqr., Louisville, Ky.

DEAR SIR: In order to satisfy the administrators or attorneys of the late C. M. Briggs (or in fact any one else) that you held jointly an interest with said C. M. Briggs, deceased, and Sam'l I. Walker in the cotton claim against the U. S. Government which you and myself went to Mississippi and took Craig's and other depositions about, I will hereby state that I know you had a joint interest with the aforesaid parties in the claim, amounting to one-third, to the best of my knowledge and understanding. I also know that you paid all the expenses of said trip and you used every means to obtain proper evidence in support of the claim. I will also state that in consultation with the said C. M. Briggs and yourself, preparatory to making the said trip to Mississippi, that it was admitted and understood between said Briggs and yourself and S. I. Walker that you possessed an equal interest jointly.

JAMES S. HULL.

28 STATE OF ILLINOIS, } ss:
Cook County, }

Personally appeared before me, George E. Stowe, a notary public in and for the county aforesaid, James S. Hull and acknowledged

that he signed the above statement, and that the matters and things therein stated and set forth are true of his own knowledge.

Subscribed and sworn to before me this third day of December, A. D. 1875.

[SEAL.]

GEO. E. STOWE,
Notary Public.

LOUISVILLE, KY., *Nov.*, 1876.

I have canceled this transfer and now still hold the claim.

A. S. SHOTWELL.

29 C. S. Morehead, Dr., to A. L. Shotwell.

To bill of exchange, dated Oct. 1st, '59, six months after date	3,000	
To interest on above from April 1st, 1860, to April 18, 1862, at 6%	368 50	
		3,368 50
To bill of exchange, dated Nov. 15, '60, four months after date	1,552 40	
" interest on above from M'ch 15, 1861, to April 18th, 1862, at 6%	101 68	
		1,654 08
" bill of exchange, dated M'ch 18, 1861, seven months after date	709 60	
" interest on above from Oct. 18th, 1862, at 6%	21 29	
		730 89
" bill of exchange, dated M'ch 18, '61, seven months after date	709 60	
" interest on above from Oct. 18th, 1861, to Ap'l 18th, 1862, at 6%	21 29	
		730 89
" bill of exchange, dated M'ch 18, 1861, seven months after date	709 60	
" interest on above from Oct. 18, 1861, to Ap'l 18, 1862, at 6%	21 29	
		730 89
		7,215 25
Oct. 29th, 1867.		
" am't paid bank at Versailles, Ky., arbitrated	2,000	
		9,215 25

30 James A. Briggs, ex'or of Charles M. Briggs, dec'd, to Ohio Valley Banking & Trust Co., adm'r of A. L. Shotwell, dec'd.

To these amounts due on account of monies received from cotton of C. S. Morehead, held in trust by C. M. Briggs:

Amounts due A. L. Shotwell by C. S. Morehead on account of bills of exchange hereto attached $7,215 25
Interest from April 18th, 1862.
Amount due A. L. Shotwell by C. S. Morehead, paid on arbitration to C. M. Briggs..... 2,000 00
Interest from October 29th, 1867.

STATE OF KENTUCKY, }
Henderson County, } *ss:*

The affiant, B. G. Witt, says that he is the cashier and general business manager of the Ohio Valley Banking & Trust Company, which is the administrator of the estate of A. L. Shotwell, dec'd.

He says that on the 18th day of April, 1862, C. S. Morehead, then a citizen of this State, but now deceased, was indebted to said Shotwell in the sum of seven thousand two hundred and fifteen dollars and twenty-five cents ($7,215.25), as shown in the account and sundry bills of exchange hereto attached. The said bills of exchange are the following: One bill for three thousand dollars, drawn by said C. S. Morehead and on himself and accepted by him in favor of A. L. Shotwell & Son, and payable six months after date, at office of J. J. Person & Co., New Orleans; one bill of exchange for fifteen hundred and fifty-two dollars and forty-five cents, drawn by
31 C. S. Morehead on himself and in his favor and accepted by him, and endorsed by A. L. Shotwell & Son, dated November 15th, 1860, and payable four months after date, which was duly protested for non-payment, and was afterwards paid by A. L. Shotwell & Son. The said bill and protest are hereto attached.

Three bills of exchange, each for seven hundred and nine dollars and sixty cents, drawn by C. S. Morehead on himself and accepted by him, in favor of A. L. Shotwell & Son, and payable seven months after date at the office of J. J. Person & Co., New Orleans, La.

The said several bills of exchange, with their interest from maturity to the 18th day of April, 1862, amounts to the said sum of seven thousand two hundred and fifteen dollars and twenty-five cents. They were in the possession of A. L. Shotwell as surviving member of the firm of A. L. Shotwell & Son, his said son, —— Shotwell, having died before him, and they have come to the hands of the Ohio Valley Banking and Trust Co. as the administrator of the estate of A. L. Shotwell, dec'd, and, so far as affiant knows or believes, no part thereof has been paid, but the same are wholly unpaid and are due, nor is there any offset or discount against same or any usury embraced therein.

The affiant says that on the said 18th day of April, 1862, the said C. S. Morehead transferred a large quantity of cotton then on his two plantations in the State of Mississippi to C. M. Briggs, in trust

that he should sell the same and with the proceeds thereof
32 pay certain debts then owing by said Morehead to said Briggs, one Samuel J. Walker, and his said debt to the said A. L. Shotwell, and the said Briggs then and there undertook and agreed to perform the said trust, and of said date made and delivered to said Walker his certain writing then and there signed by him as evidence of the said trust; which said writing is in words and figures as follows, viz:

"In consideration of the sale and transfer this day made to me by C. S. Morehead of all the cotton on his two plantations, near Eggspoint in the State of Mississippi, as specified in said sale and transfer, in writing, I hereby assume and agree to pay Samuel J. Walker, the sum of forty thousand dollars due and owing to said Walker by said C. S. Morehead, upon condition, however, that I realize sufficient amount from any cotton on or from said plantation or proceeds of same, together with about twenty-five thousand dollars due me from said C. S. Morehead for moneys advanced and liabilities for him as surety, also about ten thousand dollars, more or less, being a claim of A. S. Shotwell as he may hereafter establish against said C. S. Morehead, but in case I should not realize sufficient to pay all of said claims or amounts above named, in full, then I am to pay or divide the amount that may be realized from said cotton proportionately or *pro rate* according to the respective amounts, named to the parties above named, first, however, paying and refunding any moneys paid by the respective parties for or account of expenses pertaining to same, and in case more should be realized than
33 sufficient to pay said amounts with interest thereon, to the time of realization and payment, then any surplus to be divided, one-half to said Shotwell and (C. M. Briggs) jointly for any services, and remaining one-half to said Samuel J. Walker, but no other consideration to be paid to said Shotwell and Briggs for their services.

April 18th, 1862.

C. M. BRIGGS."

The said writing is in the hand of Mrs. Amanda M. Walker, widow and assignee of said S. J. Walker, so that affiant cannot file same herewith.

Affiant also attached hereto and makes part hereof the affidavit of James S. Hull, as evidence of the interest of said A. L. Shotwell in the said cotton and its proceeds.

Of the liabilities of C. M. Briggs for said Morehead, as surety, in the said writing mentioned, were certain notes held by the Commercial Bank at Versailles, in this State, which were afterwards paid by said Briggs, and on which A. L. Shotwell was jointly bound with said Briggs as surety.

Some controversy having arisen between said Briggs and Shotwell as to the extent of Shotwell's liability to Briggs on account thereof, "the matters in difference between them touching such suretyship" were submitted by them, in writing, to the arbitration of Thomas W. Gibson and Wm. R. Thompson, and in case they

should be unable to agree "they to choose an umpire whose decision to be final." Said submission was of date December 2nd, 1869. The said arbitrators being unable to agree, by writing of date March 3rd, 1870, selected P. B. Muir as their umpire, who made his award, in writing, "that Shotwell ought to pay Briggs ($2,000.00)
34 two thousand dollars, with interest at the rate of six per cent. per annum from the 29th of Oct., 1867, till paid."

The said award was performed by said Shotwell, and by reason thereof the interest of said Briggs in the proceeds of said cotton was diminished and that of said Shotwell was increased by the sum of two thousand dollars.

Affiant says there has come to the hands of James A. Briggs, executor of the last will and testament of said Charles M. Briggs, as proceeds of the said cotton and on account thereof, the sum of eighty-eight thousand dollars.

Affiant says that by reason of the facts herein stated the Ohio Valley Banking and Trust Company is entitled to receive from the said executor payment of the said sum of seven thousand two hundred and fifteen dollars and twenty-five cents, with interest from April 18th, 1862, and two thousand dollars ($2,000.00), with interest from October 29th, 1867, or such proportion thereof as may be just and proper and the balance of said fund in the hands of said executor may suffice to pay after deducting his proper costs and expenses about the collection thereof.

Affiant says said claim is just, and, so far as he knows or believes, no part thereof has been paid and there is no offset or discount against same, nor any usury embraced therein. Said bill of exchange, copies of the said submission and award, and also receipt of C. M. Briggs for amount of said award are hereto attached.

B. G. WITT.

Sworn to before me by B. G. Witt this October 12, 1894.

[SEAL.]

WM. H. WITT,
N. P., H. Co., Ky.

35 At a court held on the 21st day of January, 1895—

Came defendant, James A. Briggs, ex'or of will of Chas. M. Briggs, deceased, by Gibson and Marshall, attorneys, and filed his answer to the answer and counter-claim of A. L. Shotwell's administrator herein.

Said answer is as follows, to wit:

Chancery Division.

H. A. McLEMORE, Guardian, &c., Plaintiff,
vs.
JAMES A. BRIGGS, Executor, &c., Defendants.

Answer of the Defendant, James A. Briggs, Executor of the Will of Charles M. Briggs, to the Answer and Counter-claim of A. L. Shotwell's Administrator.

The defendant, James A. Briggs, executor of the will of Charles M. Briggs, deceased, for answer to the counter-claim of the administrator of A. L. Shotwell, deceased, says:

He has no knowledge or information sufficient to form a belief as to whether or not C. S. Morehead was, on the 18th day of April, 1862, or at any other time indebted to said A. L. Shotwell in divers or any sums, amounting, with or without interest, to $7,215.25 or any other sum.

He has no knowledge or information sufficient to form a belief as to whether or not said C. S. Morehead drew or accepted or endorsed any or either of the bills of exchange described in the said counter-claim aforesaid, or whether or not any liability accrued against him upon them or either of them in favor of said A. L. Shot-
36 well, and he therefore demands strict proof as to all of the facts in relation to each of the said alleged bills of exchange.

He has no knowledge or information sufficient to form a belief as to whether or not the said Morehead on the 18th day of April, 1862, transferred to his testator any quantity of cotton then on his plantation, in the State of Mississippi, in trust for the payment of any debts owing by him, and especially any debts owing to the said A. L. Shotwell, or whether the said testator accepted the said trust or agreed to sell or dispose of said cotton and with the profits thereof pay the said debts aforesaid or any part thereof.

He has no knowledge or information sufficient to form a belief as to whether or not his said testator made and delivered to Samuel J. Walker the certain writing, a copy of which is set forth in said counter-claim, and he has no knowledge or information sufficient to form a belief as to whether or not the said writing is or was the act and deed of his said testator, and therefore he demands proof of the due execution of the said paper.

He has no knowledge or information sufficient to form a belief as to whether or not the liabilities of said Morehead to his said testator embraced certain or any notes held by the Commercial Bank of Versailles, in this State, and which were afterwards paid by said testator or on which said Shotwell was jointly bound with said Briggs as surety.

He has no knowledge or information sufficient to form a belief as to whether or not the controversy which arose between said
37 Shotwell and said testator as to the extent of said Shotwell's liability to said testator were the same matters which were submitted by them to arbitration and upon which an award was made, as alleged in said counter-claim.

He has no knowledge or information sufficient to form a belief as to whether or not the award made under said arbitration was performed by said Shotwell or whether or not the payment by said Shotwell of any money under said award diminished to any extent any indebtedness due to said testator by said Morehead.

He has no knowledge or information sufficient to form a belief as to whether or not said Morehead was indebted to said Shotwell or is now indebted to said Shotwell in any sum whatever and demands strict proof of any indebtedness alleged by said Shotwell's administrator to be owing to him by the said Morehead.

He has no knowledge or information sufficient to form a belief as to whether or not the claims asserted herein by the administrator of said A. L. Shotwell ever came to or are now in the hands of the administrator of said Shotwell.

He denies that the said Shotwell's administrator has any right to share in or receive any portion of the money received by the defendant from the United States as the proceeds of the cotton transferred to his testator by C. S. Morehead; and, having answered, he prays that the counter-claim of said Shotwell's administrator may be dismissed.

Wherefore, &c.

GIBSON & MARSHALL,
Attorneys for Defendant.

James A. Briggs, being duly sworn, says the statements of the foregoing answer are true, as he verily believes.

J. A. BRIGGS.

38 Subscribed and sworn to before me by James A. Briggs this January 19th, 1895.

[SEAL.] WILL. A. COOK,
Notary Public.

At a court held on the 26th day of November, 1894—

Came Amanda M. Walker, by Helm & Bruce, counsel, and filed her reply herein to the answer of the Ohio Valley Banking & Trust Co., administrator of the estate of A. L. Shotwell, deceased, to her cross-petition herein, notice being waived by said administrator by W. B. Dixon, counsel.

Said reply is as follows, to wit:

Jefferson Circuit Court, Chancery Division.

H. A. McLEMORE, Guardian, &c., Plaintiff,
vs.
JAMES A. BRIGGS, Executor, &c., Defendant.

Reply of Amanda M. Walker to Answer of Ohio Valley Banking & Trust Company, Administrator of the Estate of A. L. Shotwell, Deceased.

Defendant Amanda M. Walker, for reply to the answer of the Ohio Valley Banking & Trust Company, administrator of the estate

of A. L. Shotwell, deceased, to her cross-petition herein, says she has no knowledge or information sufficient to form a belief as to whether or not C. S. Morehead was on the 18th day of April, 1862, or at any time indebted to A. L. Shotwell & Son in divers or any sums, in all amounting, with interest, to seven thousand two hundred
39 and fifteen and $\frac{25}{100}$ ($7,215.25) dollars or any sum.

She has no knowledge or information sufficient to form a belief as to whether or not said C. S. Morehead drew or accepted a bill of exchange in favor of A. L. Shotwell & Son for the sum of $3,000 or any sum dated October 1st, 1859, or any date, or payable six months after date at office of J. J. Person & Company of New Orleans, La., or anywhere.

She has no knowledge or information sufficient to *sufficient to* form a belief as to whether or not said C. S. Morehead drew or accepted a bill of exchange for $1,552.40 or any sum, or dated November 15th, 1860, or any date, or payable four months after said date or any date, or endorsed by A. L. Shotwell & Son, or as to whether or not said bill of exchange, if such existed, was duly or at all protested for non-payment or was afterwards paid by said A. L. Shotwell & Son.

She has no knowledge or information sufficient to form a belief as to whether or not said C. S. Morehead drew or accepted bills of exchange or any bill of exchange in favor of A. L. Shotwell & Son, each for the sum of $709.60 or any sum, dated March 18th, 1861, or any date, or payable seven months after date or any time at the office of J. J. Person & Company, New Orleans, La., or anywhere.

As to the transfer of cotton from said Morehead to C. M. Briggs and the purpose thereof and the agreement made with reference thereto, this defendant says that whatever agreement and transfer there were are shown by the writing filed with this defend-
40 ant's answer and cross-petition herein and which purports to be copied into the answer of the said Ohio Valley Banking & Trust Company, administrator aforesaid, and to which instrument this defendant now refers to speak for itself as to the terms thereof.

She has no knowledge or information sufficient to form a belief as to whether or not among the liabilities of C. M. Briggs, in said writing mentioned, were certain notes or any note held by the Commercial bank, at Versailles, in this State, or by any one, which, or any of which, were afterwards paid by said Briggs, or as to whether or not A. L. Shotwell was jointly bound with said Briggs as surety or at all upon any such note or notes.

She has no knowledge or information sufficient to form a belief as to whether or not a controversy arose between said Shotwell and Briggs as to the extent of said Shotwell's liability to Briggs on account thereof, or as to whether or not the matters in difference between them touching said suretyship *was* submitted by them in writing or at all to the arbitration of Thomas W. Gibson and William R. Thompson or any one, or that they in case of inability to agree were to choose an umpire whose decision should be final, or as to whether or not said submission was of date December 2, 1869,

or as to whether or not said arbitrators were unable to agree, or did in writing, dated March 3, 1870, or any date, select P. B. Muir as their umpire, or as to whether or not he made his award in writing or at all, or as to whether or not he decided by any such award that Shotwell ought to pay Briggs $2,000, with interest at the rate
41 of six per cent. per annum from the 29th of October, 1867, until paid, or any sum, nor as to whether or not any such award was afterwards performed by said Shotwell by the payment of $2,000 and interest, or by the payment of any sum, or at all, or as to whether or not by any such payment or in any way the interest of said Shotwell in the proceeds referred to in the answer of his administrator was increased by the sum of $2,270 or in any sum.

She has no knowledge or information sufficient to form a belief as to whether or not any part of the sums referred to in the answer and cross-petition of said administrator has been paid by or for said Morehead or by or for said Briggs, or as to whether the same or any part thereof is still due or unpaid.

She has no knowledge or information sufficient to form a belief as to whether or not the son of A. L. Shotwell referred to in the answer of his administrator has departed this life, or if so when he did so, or as to whether or not the claims referred to in the answer of said administrator have come to its hands as administrator aforesaid.

She has no knowledge or information sufficient to form a belief as to whether or not the account of the bills of exchange or copies of protest and of submission and award or receipt of C. M. Briggs for the amount of said award filed with the answer of said administrator is or are true, correct, or genuine, or as to whether or not any of them is true, correct, or genuine.

She has no knowledge or information sufficient to form a
42 belief as to whether or not the said administrator is entitled to any proportion of the proceeds of the cotton collected by defendant James A. Briggs, as executor of the will of C. M. Briggs

Wherefore this defendant prays that the counter-claim of the said Ohio Valley Banking & Trust Company, administrator of the estate of A. L. Shotwell, deceased, be dismissed, and she further prays for all equitable and proper relief, and for her costs herein expended, and further as prayed in her original answer, counter-claim, and cross-petition herein.

CHARLES M. WALKER AND
HELM AND BRUCE,
Att'ys for Amanda M. Walker.

At a court held on the 25th day of March, 1895—

This action was set at rules on the 18th inst. by the defendants.

This day came James A. Briggs, executor, by Gibson and Marshall, attorneys, and tendered and moved the court for leave to file his amended answer and one exhibit to the cross-petition of A. L. Shotwell's asministrator herein; to which the said cross-plaintiff objects.

Ordered that said motion be and is assigned to the 27th inst. for hearing.

Came again J. A. Briggs, executor, by same attorneys, and tendered and moved the court for leave to file his amended answer to the cross-petition of Amanda M. Walker herein; to which said cross-plaintiff objects.

43 Ordered that said motion be and is assigned to the 27th inst. for hearing.

Came James A. Briggs, executor, and Amanda M. Walker and the Ohio Valley Banking & Trust Company, administrator of the estate of Shotwell, deceased, all by counsel, and all being parties to this action, and filed a statement signed by James A. Briggs, who is the executor of the will of Charles M. Briggs, deceased, to the effect that he believes the signature of Charles M. Briggs to the paper upon which the claim of said Amanda M. Walker herein is based and a copy of which if filed with her answer and cross-petition in this cause, the original having been exhibited to said James A. Briggs, is the genuine signature of his testator, to wit, Charles M. Briggs.

And thereupon it was agreed of record by said parties that the said statement of said James A. Briggs should be read as his deposition in this cause.

At a court held on the 13th day of May, 1895—

The court being advised, it is ordered that the motion of defendant, James A. Briggs, executor, to file amended answers to cross-petitions of Amanda M. Walker and A. L. Shotwell's ad'm'r, tendered March 25th, 1895, be and is sustained.

And said amended answers are now filed herein; to which said cross-plaintiffs Walker and Shotwell's ad'm'r except.

Said amended answers are as follows, to wit:

44 Jefferson Circuit Court, Chancery Division.

H. A. McLEMORE, Guardian, Plaintiff,
vs.
J. A. BRIGGS, Ex'or, &c., Defendants.

Amended Answer of J. A. Briggs, Executor, to Cross-petition of A. L. Shotwell's Administrator Against Him.

The defendant, J. A. Briggs, executor of the will of Charles M. Briggs, by leave of court amends his answer to the cross-petition of A. L. Shotwell's administrator against him and says—

That he is informed, believes, and charges that on the 18th day of April, 1862, Charles S. Morehead was largely indebted to this defendant's testator for money loaned and advanced to him prior thereto, and that said testator had theretofore become bound as surety for said Morehead in a large sum.

That on said day said Morehead executed and delivered to this defendant's testator an instrument in writing in words and figures as follows:

"For and in consideration of money loaned and advanced heretofore by C. M. Briggs and further valuable consideration by way of suretyship for me by said Briggs, I hereby sell and transfer to said C. M. Briggs all of the cotton on my two plantations in Mississippi near Eggspoint and Greenville. Said cotton, so sold, embraces all that I have, baled and unbaled, gathered and ungathered. This is intended to cover all cotton that I have now or may have this year on said two plantations, supposed to be about 2,000 bales.

April 18, 1862.

C. S. MOREHEAD."

45 Defendant says that by reason of the war then existing in the United States his testator was unable to get possession of the cotton on the plantations of said Morehead so transferred to him as aforesaid, and the same was seized by the authorities of the United States and was sold and the proceeds paid into the Treasury and there remained until recovered by this defendant, as hereinafter recited. The said Charles M. Briggs in his lifetime made repeated but unsuccessful efforts to secure the payment to him of the proceeds of said cotton and employed counsel to assist him in his efforts to collect the same, and entered into written agreements with his said counsel whereby he undertook to pay them for their services a sum equal to one-half of the amount which might be received from the United States on account of his claim to the proceeds of said cotton; which agreement was renewed by this defendant after the death of said testator.

He says that through the efforts of said counsel the Congress of the United States was induced to pass "An act for the relief of the estate of C. M. Briggs, deceased," approved June 4th, 1888, which reads as follows:

"Be it enacted, etc. That the Court of Claims is hereby given, subject to the proviso hereinafter mentioned, like jurisdiction to hear and determine the claim of the legal representatives of C. M. Briggs, deceased, for the proceeds of four hundred and fifty-five bales of cotton, now in the Treasury of the United States, alleged to have been owned, in whole or part, by said Briggs, as is given to

46 said court by the acts of March t-elfth, eighteen hundred and sixty-three and July second, eighteen hundred and sixty-four, upon petition to be filed in said court at any time within two years from the passage of this act, any statute of limitations to the contrary notwithstanding:

"Provided however, that unless the said court shall, on a preliminary inquiry, find that said Briggs was in fact loyal to the United States Government, and that the assignment to him hereinafter mentioned was *bona fide*, the court shall not have jurisdiction of the case, and the same shall, without further proceedings be dismissed:

"And provided further, that if the court shall find that the alleged assignment from one Morehead to said Briggs of date April 18th, eighteen hundred and sixty-two, under which said Briggs claimed said cotton, was intended only as security to said Briggs for indebtedness, and against contingent liabilities assumed by him

for said Morehead, judgment shall be rendered for such portion of the proceeds of said cotton as will satisfy the debts and claims of said Briggs, to secure which said assignment was given:

"Provided, said judgment shall not be paid out of the general fund in the Treasury arising from the sale of captured and abandoned property, but shall be paid out of the special fund charged to and accounted for by Captain G. L. Fort, assistant quartermaster at Memphis, arising from the sale of the two thousand two hundred and nine bales of cotton received by him, with which claimant's cotton was intermingled, said claimant to receive only the
47 proportion which his cotton bears to the net proceeds accounted for by said Fort. (June 4, 1888, ch. 348, Stat. L., 1075.)"

In pursuance to the said act this defendant, through his said counsel, instituted an action against the United States in the Court of Claims to recover the proceeds of sale of the cotton aforesaid, and in and by said action it was finally determined and adjudged that the said testator was loyal to the United States, and that the assignment made by said Morehead to defendant's testator was *bona fide* and founded on a valuable consideration, but this defendant was, by the act aforesaid, as well as the final judgment of the Court of Claims, limited in his recovery to such sum as would satisfy the debts and claims of his testator, to secure which the said assignment was given, and this defendant says that by the final judgment of said Court of Claims he only received and recovered from the United States such sum as was owing directly to his testator by said Morehead, and did not recover anything whatsoever for or on account of anything that may have been owing by said Morehead to A. L. Shotwell or Samuel J. Walker.

Defendant says that the passage of the act aforesaid was an act of grace on the part of the United States for the sole benefit of this defendant, and to permit this defendant to assert a claim against the proceeds of said cotton to the extent that said Morehead was indebted to his testator; that long prior thereto all claim that had existed in favor of said testator as against the United States for any part of the proceeds of said cotton had been barred by limit-
48 ation, and said claim was outlawed and worthless. He says it was not intended by said act that this defendant should recover anything for the benefit, directly or indirectly, of any other person.

He says that he never knew of the existence of the instrument of writing set up and attached to the answer and cross-petition of Amanda Walker herein until after final judgment had been entered in his favor by the Court of Claims. He says that both Samuel J. Walker and Alfred L. Shotwell knew of the efforts being made by said C. M. Briggs and this defendant to collect the said claim from the United States and gave important evidence in support of the same, but the existence of said instrument of writing aforesaid, on which said Amanda Walker and A. L. Shotwell's administrator now base their claims, was concealed and kept secret from the Congress of the United States, from the Court of Claims, and this defendant,

and both said Walker and said Shotwell concealed the fact that they had or claimed to have any interest in said claim, but represented by their evidence that the said C. M. Briggs or his estate would be the sole beneficiary of the same if allowed, except that said Shotwell did in one deposition disclose the fact that he asserted a one-third interest in said claim by and under a special contract with C. M. Briggs, made after said cotton had been assigned to him by C. S. Morehead, but not under the instrument of writing aforesaid. This assertion of a claim by said Shotwell was wholly inconsistent with and contradictory of repeated statements made by him
49 in reference to his disinterestedness in regard to the said claim so made by this defendant.

This defendant reiterates his denial of a want of knowledge or information sufficient to form a belief as to whether his said testator ever executed, signed, or delivered the instrument of writing aforesaid, but he says that in no event did his said testator assume any person- liability to pay said Walker or Shotwell any sum whatever, nor was said testator under any contingent liability to pay, as surety of said Morehead, any sum owing by him to said Walker or said Shotwell.

Defendant says that the most material and important evidence which he was able to procure in support of his action, and which was read and considered in the Court of Claims, was an affidavit of the said Samuel J. Walker, voluntarily made by said Walker at the request of affiant's testator, wherein said Walker testified that it was true that he was the "counsellor, advisor, and friend" of C. S. Morehead and frequently talked with said Morehead about his (said Morehead's) indebtedness to defendant's testator, C. M. Briggs; that in all his conversations on said subject said Morehead said he was largely indebted to said Briggs for moneys advanced and liabilities as surety for him; that he, said Walker, wrote the bill of sale aforesaid from said Morehead to said Briggs; that the same was done as evidence of a *bona fide* sale and transfer to said Briggs for the purpose specified in said bill of sale, and that said transfer of said cotton "was absolute and *bona fide* on account of the liabil-
50 ities and indebtedness of said Morehead to said Briggs existing prior to the date of said bill of sale," and this defendant says that the said Walker, by voluntarily making the said statement in support of the claim made by said Charles M. Briggs, estopped himself and those claiming under him from asserting any claim to any part of whatever might be recovered or received from the United States as the proceeds of said cotton.

Defendant says that if it was the purpose of said Samuel J. Walker or Amanda M. Walker to assert any claim against him or his testator for any part of the proceeds of said cotton, under the writing now set up and relied on by the said Amanda M. Walker, that fact was suppressed and concealed from this defendant, the Court of Claims, and the United States, and such suppression and concealment of said paper was a fraud in which this defendant did not participate or have any knowledge of.

Defendant further says that the said A. L. Shotwell was an im-

portant witness for this defendant in his said action in the Court of Claims, and testified in said action that he had no interest, direct or indirect, in the said claim which this defendant was asserting in said court under the bill of sale and act of Congress herein referred to, and said Shotwell voluntarily testified in said action that he had personal knowledge of the fact that C. S. Morehead was largely indebted to defendant's testator at the time of giving the bill of sale aforesaid, and that the bill of sale was given by said More-
51 head to said Briggs "for the consideration of paying said Morehead's indebtedness to him (said Briggs) and nothing else."

Defendant says that said Shotwell did claim, however, in his said testimony that under an agreement made between him and said Briggs, after the said bill of sale was executed and delivered, as aforesaid, he undertook to assist said Briggs in recovering said cotton, and that in consideration of his services said Briggs agreed to pay him one-third of whatever might be received by said Briggs on account of said cotton.

Defendant says that Shotwell concealed and suppressed from this defendant and from the United States and the Court of Claims the existence of the writing set up in his answer and on which his administrator bases his claim asserted herein, which concealment and suppression was a fraud in which this defendant did not participate or have any knowledge of, and defendant says that by reason of said fraud and of the testimony given by said Shotwell, as aforesaid, said Shotwell and those claiming under him are estopped from asserting claim to any part of the amount recovered by this defendant.

Defendant files herewith and makes part hereof to be read as evidence in his behalf certified copies of two depositions given by said A. L. Shotwell in defendant's behalf in the said action in the Court of Claims, with copies of affidavits of said A. L. Shotwell and S. B. Shotwell, which were made exhibits with one of said depositions of A. L. Shotwell, and also files a certified copy of the affidavit
52 of Samuel J. Walker, hereinbefore referred to, and which was filed and read as evidence in this defendant's behalf in the said action aforesaid.

All of said copies of depositions and affidavits are bound together and certified by the clerk of the Court of Claims under one certificate and are marked Exhibit "A" with this pleading.

Further answering, defendant says he has no knowledge or information sufficient to form a belief as to whether or not the instrument of writing set up and relied on by Amanda M. Walker and A. L. Shotwell's administrator herein was ever executed by his testator or whether, if executed by him, it was delivered by him to any person whatsoever; and he therefore denies the execution of the same by his testator and says it is not true that the same was ever delivered by his testator to Charles S. Morehead, Samuel J. Walker, or A. L. Shotwell.

Wherefore, having fully answered, defendant prays to be dismissed.

GIBSON & MARSHALL,
Attorneys for J. A. Briggs, Ex'or.

J. A. Briggs, being sworn, says he is a defendant in the above-mentioned suit, and the statements of the above and foregoing amended answer are true as he verily believes.

J. A. BRIGGS.

Subscribed and sworn to before me by J. A. Briggs this March 23, 1895.

WM. T. HALE,
Notary Public, Jefferson County, Kentucky.

53 Commission expires January 11th, 1896.

Jefferson Circuit Court, Chancery Division.

H. A. McLEMORE, Guardian, Plaintiff,
vs.
J. A. BRIGGS, Ex'or, &c., Defendants.

Amended Answer of J. A. Briggs, Executor, to Cross-petition of Amanda M. Walker, against Him.

The defendant, J. A. Briggs, executor of the will of Charles M. Briggs, by leave of court amends his answer to the cross-petition of Amanda M. Walker against him and says—

That he is informed, believes, and charges that on the 18th day of April, 1862, Charles S. Morehead was largely indebted to this defendant's testator for money loaned and advanced to him prior thereto, and that said testator had theretofore become bound as surety for said Morehead in a large sum.

That on said day said Morehead executed and delivered to this defendant's testator an instrument in writing in words and figures as follows:

"For and in consideration of money loaned and advanced heretofore by C. M. Briggs, and further valuable consideration by way of suretyship for me by said Briggs, I hereby sell and transfer to said C. M. Briggs all of the cotton on my two plantations in Mississippi, near Eggspoint and Greenville.

Said cotton, so sold, embraces all that I have, baled and unbaled, gathered and ungathered. This is intended to cover all
54 cotton that I have now or may have this year on said two plantations, supposed to be about 2,000 bales.

April 18, 1862.

C. S. MOREHEAD."

Defendant says that by reason of the war then existing in the United States his testator was unable to get possession of the cotton on the plantations of said Morehead so transferred to him as aforesaid, and the same was seized by the authorities of the United States and was sold and the proceeds paid into the Treasury and there remained until recovered by this defendant, as hereinafter recited. The said Charles M. Briggs in his lifetime made repeated, but unsuccessful, efforts to secure the payment to him of the proceeds of

said cotton, and employed counsel to assist him in his efforts to collect the same, and entered into written agreements with his said counsel, whereby he undertook to pay them for their services a sum equal to one-half of the amount which might be received from the United States on account of his claim to the proceeds of said cotton, which agreement was renewed by this defendant after the death of said testator.

He says that through the efforts of said counsel the Congress of the United States was induced to pass "An act for the relief of the estate of C. M. Briggs, deceased," approved June 4th, 1888, which reads as follows:

"Be it enacted, etc., That the Court of Claims is hereby given, subject to the proviso hereinafter mentioned, like jurisdiction to hear and determine the claim of the legal representatives of C. M. Briggs, deceased, for the proceeds of four hundred and fifty-five bales
55 of cotton, now in the Treasury of the United States, alleged to have been owned in whole or part, by said Briggs, as is given to said court by the acts of March twelfth, eighteen hundred and sixty-three, and July second, eighteen hundred and sixty-four, upon petition to be filed in said court at any time within two years from the passage of this act, any statute of limitations to the contrary notwithstanding:

"Provided however, that unless the said court shall, on a preliminary inquiry, find that said Broggs was in fact loyal to the United States Government, and that the assignment to him hereinafter mentioned was *bona fide*, the court shall not have jurisdiction of the case, and the same shall without further proceedings, be dismissed:

"And, provided further, that if the court shall find that the alleged assignment from one Morehead to said Briggs of date April eighteenth, eighteen hundred and sixty-two, under which said Briggs claimed said cotton, was intended only as security to said Briggs for indebtedness, and against contingent liabilities assumed by him for said Morehead, judgment shall be rendered for such portion of the proceeds of said cotton as will satisfy the debts and claims of said Briggs, to secure which said assignment was given:

"Provided, said judgment shall not be paid out of the general fund in the Treasury arising from the sale of captured and abandoned property, but shall be paid out of the special fund charged to and accounted for by Captain G. L. Fort, assistant quartermaster at Memphis, arising from the sale of the two thousand two hundred and nine bales of cotton received by him, with which claim-
56 ant's cotton was intermingled, said claimant to receive only the proportion which his cotton bears to the net proceeds accounted for by said Fort." (June 4, 1888, ch. 348, Stat. L., 1075.)

In pursuance to the said act this defendant, through his said counsel, instituted an action against the United States in the Court of Claims to recover the proceeds of sale of the cotton aforesaid, and in and by said action it was finally determined and adjudged that the said testator was loyal to the United States, and that the assignment made by said Morehead to defendant's testator was *bona fide*

and founded on a valuable consideration; but this defendant was by the act aforesaid, as well as the final judgement of the Court of Claims, limited in his recovery to such sum as would satisfy the debts and claims of his testator, to secure which the said assignment was given, and this defendant says that by the final judgement of said Court of Claims he only received and recovered from the United States such sum as was owing directly to his testator by said Morehead, and did not recover anything whatsoever for or on account of anything that may have been owing by said Morehead to A. L. Shotwell or Samuel J. Walker.

Defendant says that the passage of the act aforesaid was an act of grace on the part of the United States for the sole benefit of this defendant and to permit this defendant to assert a claim against the proceeds of said cotton to the extent that said Morehead was indebted to his testator; that long prior thereto all claim that had existed in favor of said testator as against the United States for any part of the proceeds of said cotton had been barred by limita-
57 tion, and said claim was outlawed and worthless. He says it was not intended by said act this defendant should recover anything for the benefit, directly or indirectly, of any other person.

He says that he never knew of the existence of the instrument of writing set up and attached to the answer and cross-petition of Amanda Walker herein until after final judgement had been entered in his favor by the Court of Claims.

He says that both Samuel J. Walker and Alfred L. Shotwell knew of the efforts being made by said C. M. Briggs and this defendant to collect the said claim from the United States and gave important evidence in support of the same; but the existence of said instrument of writing aforesaid, on which said Amanda Walker and A. L. Shotwell's administrator now base their claims, was concealed and kept secret from the Congress of the United States, from the Court of Claims, and this defendant, and both said Walker and said Shotwell concealed the fact that they had or claimed to have any interest in said claim, but represented by their evidence that the said C. M. Briggs or his estate would be the sole beneficiary of the same if allowed, except that said Shotwell did, in one deposition, disclose the fact that he asserted a one-third interest in said claim by and under a special contract with C. M. Briggs, made after said cotton had been assigned to him by C. S. Morehead, but not under the instrument of writing aforesaid.

This assertion of a claim by said Shotwell was wholly inconsistent with and contradictory of repeated statements made by him
58 in reference to his disinterestedness in regard to the said claim so made by this defendant.

This defendant reiterates his denial of a want of knowledge or information sufficient to form a belief as to whether his said testator ever executed, signed, or delivered the instrument of writing aforesaid, but he says that in no event did his said testator assume any personal liability to pay said Walker or Shotwell any sum whatever, nor was said testator under any contingent liability to

pay as surety of said Morehead any sum owing by him to said Walker or said Shotwell.

Defendant says that the most material and important evidence which he was able to procure in support of his action, and which was read and considered in the Court of Claims, was an affidavit of the said Samuel J. Walker, voluntarily made by said Walker at the request of affiant's testator, wherein said Walker testified, and it was true, that he was the "counsellor, advisor, and friend" of C. S. Morehead, and frequently talked with said Morehead about his (said Morehead's) indebtedness to defendant's testator, C. M. Briggs; that in all his conversations on said subject said Morehead said he was largely indebted to said Briggs for moneys advanced and liabilities as surety for him; that he, said Walker, wrote the bill of sale aforesaid from said Morehead to said Broggs; that the same was done as evidence of a *bona fide* sale and transfer to said Broggs for the purposes specified in said bill of sale, and that said transfer of said cotton "was absolute and *bona fide* on account of the
59 liabilities and indebtedness of said Morehead to said Briggs existing prior to the date of said bill of sale," and this defendant says that the said Walker, by voluntarily making the said statement in support of the claim made by said Charles M. Briggs, estopped himself and those claiming under him from asserting any claim to any part of whatever might be recovered or received from the United States as the proceeds of said cotton.

Defendant says that if it was the purpose of said Samuel J. Walker or Amanda M. Walker to assert any claim against him or his testator for any part of the proceeds of said cotton under the writing now set up and relied on by the said Amand- M. Walker, that fact was suppressed and concealed from this defendant, the Court of Claims, and the United States, and such suppression and concealment of said paper was a fraud in which this defendant did not participate or have any knowledge of.

Defendant further says that the said A. L. Shotwell was an important witness for this defendant in his said action in the Court of Claims and testified in said action that he had no interest, direct or indirect, in the said claim which this defendant was asserting in said court under the bill of sale and act of Congress herein referred to, and said Shotwell voluntarily testified in said action that he had personal knowledge of the fact that C. S. Morehead was largely indebted to defendant's testator at the time of giving the bill of sale aforesaid, and that the said bill of sale was given by said Morehead to said Briggs "for consideration of paying said
60 Morehead's indebtedness to him (said Briggs), and nothing else."

Defendant says that said Shotwell did claim, however, in his said testimony that under an agreement made between him and said Briggs after the said bill of sale was executed and delivered, as aforesaid, he undertook to assist said Briggs in recovering said cotton, and that in consideration of his services said Briggs agreed to pay him one-third of whatever might be received by said Briggs on account of said cotton.

Defendant says that Shotwell concealed and suppressed from this defendant and from the United States and the Court of Claims the existence of the writing set up in his answer and on which his administrator bases his claim asserted herein, which concealment and suppression was a fraud in which this defendant did not participate or have any knowledge of, and defendant says that by reason of said fraud and of the testimony given by said Shotwell, as aforesaid, said Shotwell and those claiming under him are estopped from asserting claim to any part of the amount recovered by this defendant.

Defendant files herewith and makes part hereof to be read as evidence in his behalf certified copies of two depositions given by said Shotwell in defendant's behalf in the said action in the Court of Claims, with copies of affidavits of said A. L. Shotwell and S. B. Shotwell which were made exhibits with one of said depositions of A. L. Shotwell, and also files a certified copy of the affidavit of Samuel J. Walker hereinbefore referred to and which was
61 filed and read as evidence in this defenda-t's behalf in the said action aforesaid.

All of said copies of depositions and affidavits are bound together and certified by the clerk of the Court of Claims under one certificate and are marked Exhibit "A" with this pleading.

Further answering, defendant says he has no knowledge or information sufficient to form a belief as to whether or not the instruments of writing set up and relied on by Amanda M. Walker and A. L. Shotwell's administrator herein was ever executed by his testator, or whether if executed by him it was delivered by him to any person whatsoever, and he therefore denies the execution of the same by his testator and says it is not true that the same was ever delivered by his testator to Charles S. Morehead, Samuel J. Walker, or A. L. Shotwell.

Wherefore, having fully answered, defendant prays to be dismissed.

GIBSON & MARSHALL,
Attorneys for J. A. Briggs, Executor.

J. A. Briggs, being sworn, says he is a defendant in the above-mentioned suit, and the statements of the above and foregoing amended answer are true as he verily believes.

J. A. BRIGGS.

Subscribed and sworn to before me by J. A. Briggs, this March 23, 1895.

WM. T. HALE,
Notary Public, Jefferson County, Kentucky.

Commission expires January 11th, 1896.

62 Said exhibit marked "A" filed with amended answer of J. A. Briggs, ex'or, is as follows, to wit:

In the Court of Claims.

JAMES A. BRIGGS, Executor of C. M. Briggs,
vs.
THE UNITED STATES. } No. 16262.

Affidavit of Alfred L. Shotwell. Filed March 5, 1889.

(Exhibit No. 1 with deposition of A. L. Shotwell. Clarence E. Walker, notary.)

STATE OF KENTUCKY,
Jefferson County, } *ss:*

Personally appeared before me, a justice of the peace in and for the said county and State, Alfred L. Shotwell, who, being of mature age and first duly sworn according to law, states that he was well and intimately acquainted with Charles S. Morehead for forty years prior to his death; immediately prior to 1860 he was said Morehead's commission merchant, endorser, and financial advisor; that in many and frequent conversations between 1855 and 1860 said Morehead told this affiant he was deeply indebted to Charles M. Briggs for money loaned to him, the said Morehead, and money paid said Briggs as surety or accom-odation endorser for him, the said Morehead, and for money used by said Morehead which belonged to their law partnership, arising from fees in the practice of law.

63 And this affiant states from his personal knowledge of the pecuniary affairs of said Morehead; he knows that Charles S. Morehead was, prior to the year 1860, indebted to Charles M. Briggs in a very large amount of money, amounting to many thousands of dollars, for money loaned, money paid as accom-odation endorser, and money used of the fees belonging to the law partner of the said Morehead and said Briggs. This affiant states that he knows of the sale of cotton in April, 1862, by said Charles S. Morehead to Charles M. Briggs, and knows the sale was in good faith and for the consideration of paying said Briggs said Morehead's indebtedness to him and for nothing else. Affiant knows that Charles M. Briggs made repeated attempts to get to and protect said cotton and to bring the same out to market in the years 1862, 1863, and was only prevented by military orders from doing so.

Affiant states Charles S. Morehead died in 1868; that a short time prior to his death he told affiant the debt due to Charles M. Briggs nor any part of the same was ever paid, but was still due and unpaid. On many occassions prior to that conversation, extending the time back to said Morehead's return from Europe to this plantation, Charles S. Morehead told this affiant that he had sold in April, 1862, all of his cotton on the two plantations to Charles M. Briggs and given him therefore a bill of sale dated in April, 1862, and expressed his anxiety that said Briggs would recover the cotton or the proceeds thereof, as this was the only way in which said Briggs would ever get anything for his debts, and he doubted whether

the proceeds of the cotton would be sufficient in amount to
64 pay him. This affiant knows that Charles M. Briggs purchased of John B. Ford, of Albany, Ind., a large interest in a steamboat in 1862 or 1863, for the purpose of getting this cotton out; the boat was loaded—papers, permits, etc., all right—and the boat was only hindered from going out by orders from General Grant, who was at the time besieging Vicksburg. This last statement is made from personal knowledge and from joint conversations heard between J. B. Ford and C. M. Briggs in reference to same.

Affiant would further say that he is as well acquainted with the signature of C. S. Morehead as he is with his own; and he says the signature of "C. S. Morehead" to a bill of sale of cotton to C. M. Briggs, *to* body of which bill of sale is in the writing of J. S. Walker, and which is dated April 18th, 1862, is the true and genuine signature of Charles S. Morehead. Affiant knows that C. M. Briggs made repeated efforts from the date of the bill of sale to go after said cotton until after the close of the war he heard this cotton had been taken by the United States authorities. Said Briggs made arrangements with his affiant to go with him after said cotton in the winter or spring of 1863, and they were alone prevented by military orders and the movement of the United States troops. And he states affiant and said Briggs never ceased making joint and individual efforts to get out said cotton until after they learned it had been taken by the United States authorities, and they never learned until the lat-
ter part of the year 1871 by whom said cotton or a portion of
65 it had been taken. Affiant means by the above statement that he was employed by said Briggs to assist him in getting said cotton out; from his knowledge of the country and his acquaintance with the people in the vicinity of Eggspoint and Greenville, Mississippi, his assistance was deemed very valuable.

January 29th, 1872.

A. L. SHOTWELL.

Witnesses:
CHARLES MILLER.
I. T. BRANLETTE.

Subscribed and sworn to this 1st day of February, A. D. 1872.

J. SPEED PEAY, *J. P., J. C.*

STATE OF KENTUCKY, }
Jefferson County. }

I, Charles M. Thruston, clerk in and for said county and State, hereby certify that J. Speed Peay, whose name appears to the foregoing affidavit, is and was at the time of the signing of the same a duly qualified and acting justice of the peace in and for said county, and his acts are entitled to full faith and credit as such.

Witness my hand and official seal this the 19th day of March, 1872.

[SEAL.]

CH. M. THRUSTON, *Clerk.*

Affidavit of S. B. Shotwell.

Filed March 5, 1889.

STATE OF KENTUCKY, } ss:
Jefferson County, }

Personally appeared before me, a justice of the peace in and for th
State and county aforesaid, ——— ———, and, first being duly sworn ac
cording to law, says he is of lawful age and a resident o
66 Louisville, Kentucky, and he says he is personally acquainte
with Charles M. Briggs and did know Charles S. Morehea
for many years prior to his death. Affiant was the "Son" in th
mercantile partnership of A. L. Shotwell & Son, which did business i
Louisville, Kentucky, from 1855 until about 1862, and he was the book
keeper in said house. He says he had frequent conversations wit
Charles S. Morehead, between 1855 and 1862, in reference to sai
Morehead's indebtedness to C. M. Briggs, and in all these conversa
tions said Morehead told affiant he was very largely indebted t
C. M. Briggs, and from affiant's position in the said firm he know
that said Briggs paid into said firm large sums of money on accoun
of said Morehead, and from other facts in his knowledge he state
that said Morehead was indebted to said Briggs in a very larg
amount of money. Affiant knows, from frequent conversations wit
C. S. Morehead subsequent to 1862, that he, said Morehead, sold t
said Briggs all the cotton on his two plantations in order to pay th
indebtedness referred to by this affiant, and said Morehead told thi
affiant he had made a bill of sale to said Briggs of said cotton, an
affiant has examined the bill of sale in the handwriting of S. J
Walker and dated 18th of April, 1862, and signed C. S. Morehead
Affiant is well acquainted with the signature of said Morehead, an
he knows the signature appended to said paper is the true an
genuine signature of C. S. Morehead.

Affiant says he knows said Briggs made a contract with hi
67 father, A. L. Shotwell, to assist him in going after and gettin
out said cotton, and he says they made many and repeate
efforts to do so, but were prevented and hindered by military order
and movements of the United States troops, and he knows sai
Briggs never ceased his efforts to get and bring out said cotton unti
he learned it had been taken and carried away. Affiant says h
knows that in the years 1862 or 1863 said Briggs purchased on
half a steamboat from Captain J. B. Ford, and every effort wa
made and every preparation necessary completed to go out and brin
in said cotton, but he was prevented by military orders, as aforesai

February 1st, 1872.

S. B. SHOTWELL.

Witnesses:
CHAS. MILLER.
JAS. T. BRAMLETTE.

Sworn to and subscribed before me this 1st day of February, A. I
1872.

J. SPEED PEAY, *J. P., J. C.*

STATE OF KENTUCKY, }
Jefferson County. }

I, Charles M. Thruston, clerk in and for said county and State, hereby certify that J. Speed Peay, whose name appears to the foregoing affidavit, is and was at the time of signing the same a duly qualified and acting justice of the peace in and for said county, and his acts are entitled to full faith and credit as such. Witness my hand and official seal this 19th day of March, 1872.

CH. M. THRUSTON, *Clerk.* [SEAL.]

68 *Deposition of A. L. Shotwell on Behalf of Defendant. Filed May 11, 1893.*

In the Court of Claims.

JAMES A. BRIGGS, Ex'r of C. M. Briggs, }
vs. } No. 16262.
THE UNITED STATES. }

To Hon. Phil. Thompson, attorney for claimant:

Take notice that in the above-entitled case the defendant will take the deposition of Alfred L. Shotwell at his residence, No. 24 East Pearl street, Cincinnati, Ohio, before Michael Muller, a notary public, at one o'clock p. m. on Saturday, the 8th day (eighth) of April, 1893, at which place and time you are hereby notified to appear and cross-examine the witness if you think proper.

JOHN B. COTTON,
Ass't Att'y General.

I hereby accept service of this notice this 21st day of March, 1893.

PHIL. B. THOMPSON, JR.

In the Court of Claims.

JAMES A. BRIGGS, Ex't'r of C. M. Briggs, }
vs. } No. 16262.
THE UNITED STATES. }

Deposition of a witness produced, sworn, and examined at the hour of 1 o'clock p. m. on the 8th day of April, 1893, at 24 East Pearl street, Cincinnati, Ohio, before me, the undersigned, a notary public in and for Hamilton county, Ohio, in a certain cause now pending in the Court of Claims, wherein James A. Briggs,
69 ex't'r of C. M. Briggs, is claimant and The United States are defendants, when were present Phil. B. Thompson, Jr., counsel on behalf of the claimant, and J. W. Mather, counsel on behalf of the defendants.

ALFRED L. SHOTWELL, having been produced as a witness on behalf of the defendants, was by me sworn before any question was put to him to tell the truth, the whole truth, and nothing but the truth

relative to the said cause, and thereupon deposed and said that his name is Alfred L. Shotwell; that his occupation is nothing now; formerly commission merchant for 30 years: that he is 83 years of age; that his place of residence is 24 East Pearl street, Cincinnati, Ohio; that he has a one-third interest in this claim, and that he is not related to the claimant; and thereupon the said Alfred L. Shotwell was examined by the counsel for the defendants and in answer to interrogatories testified as follows:

1 Ques. State your name, age, and post-office address at present.

Ans. Alfred L. Shotwell; 83 years, and 24 East Pearl street, Cincinnati, Hamilton Co., Ohio.

2 Ques. Are you the same Alfred L. Shotwell who was examined on the part of the claimant in this case at Louisville, Ky., on the 28th day of February, 1889?

Ans. Yes; I am.

3 Ques. Did you ever talk with Charles S. Morehead in regard to this claim?

Ans. Not that I remember.

4 Ques. Would you have remembered it if the matter had ever been discussed between you?

Ans. I reckon so.

70 5 Ques. Do you know of any business transactions between Charles S. Morehead and Charles M. Briggs?

Ans. Not particularly.

6 Ques. Do you know of your own knowledge of any notes being given by Charles S. Morehead and endorsed by Charles M. Briggs?

Ans. Yes.

7 Ques. When was that note given?

Ans. I don't remember the date, but way yonder back in the "sixties."

8 Ques. Do you know of your knowledge of any more than this one note?

Ans. I don't remember any particular one now.

9 Ques. Would you have remembered if any had come under your observation?

Ans. I reckon I would.

10 Ques. Who indorsed this note from Charles M. Morehead to Charles M. Briggs?

Ans. Charles M. Briggs and myself.

11 Ques. What was the amount of that note?

Ans. About $5,000.00 is my recollection.

12 Ques. Has any portion of that note been paid by you, and, if so, to whom?

Ans. I paid $2,000.00 of it to Charles M. Briggs.

13 Ques. Was that in full satisfaction for one-half of the note?

Ans. It was. One-half of the note was compromised for $2,000.00.

71 14 Ques. Do you know of your own knowledge of any money being paid by Charles M. Briggs to Charles S. Morehead between 1850 and 1863?

Ans. I know that he lent his uncle every dollar he could rake and scrape in that time.

15 Ques. When were you ever present when Charles M. Briggs loaned Charles S. Morehead money?

Ans. Not when I can remember.

16 Ques. What was Charles M. Briggs' financial condition from time you knew — until time of his death?

Ans. I think he died very independent.

17 Ques. What was Charles M. Briggs' financial condition prior to 1863?

Ans. I don't know.

18 Ques. Do you know of his having any money or property prior to his going into the lottery or library scheme with Gov. Bramlette and Col. Durette?

Ans. No, sir.

19 Ques. Was there a large amount of money realized from that operation?

Ans. I think there was.

20 Ques. Do you know of your own knowledge whether Charles S. Morehead ever sold Charles M. Briggs any cotton?

Ans. Yes.

21 Ques. What knowledge have you of that fact?

Ans. I saw the bill of sale.

22 Ques. In whose possession was the bill of sale when you saw it?

Ans. C. M. Briggs.

72 23 Ques. Did you ever see it more than once?

Ans. Don't remember.

24 Ques. Where were you when you saw it?

Ans. In Briggs' office.

25 Ques. Do you remember the year?

Ans. No.

26 Ques. Did you ever see Charles S. Morehead after September 26th, 1861, up to the time of his death?

Ans. Not that I remember.

27 Ques. Was that bill of sale of the cotton from Morehead to Briggs a sale absolute or was it as a pledge for payment of debt?

Ans. A sale absolute, I thought.

28 Ques. Did Charles M. Briggs ever say to you that he took that bill of sale to secure Charles M. Briggs, Sam'l J. Walker, and yourself for money obligations—endorsements made by these three persons?

Ans. I don't remember that he ever did.

29 Ques. What proportion of this claim were you to have for the money you paid for Morehead on bank paper and securities?

Ans. One-third.

30 Ques. Did C. M. Briggs tell you that the bill of sale for the cotton was given to said C. M. Briggs by said C. S. Morehead for the purpose of paying C. M. Briggs, S. J. Walker, and yourself for such sums or notes by virtue of endorsements?

A. He did.

73 31 Ques. In whose presence did he make this statement to you?

Ans. Don't remember.

32 Ques. Was it in Mr. Hull's presence?

Ans. Not that I remember.

33 Ques. Have you not Mr. Hull's affidavit to that effect?

Objected to by counsel for claimants.

Ans. Yes; I have.

Answer objected to by counsel for claimants.

34 Ques. Do you now remember of Jas. S. Hull being present when you and C. M. Briggs talked this bill of sale over?

Ans. Yes.

35 Ques. At that time did C. M. Briggs inform you that you were to have one-third of the claim for your advances and endorsements upon notes, commercial paper, for C. S. Morehead?

A. Yes.

36 Ques. In pursuance of that arrangement *that when* Briggs and Morehead and the communication from Briggs to you of that arrangement, did you make personal efforts to secure this claim?

Objected to by counsel for complainant.

Ans. Yes.

37 Ques. Was it through you that the attorney, Wm. M. Oberly, was engaged to prosecute this claim?

Ans. Yes.

74 38 Ques. Have you been in frequent correspondence with the attorney of the claimant in this case from 1875 until the present time?

Objected to by counsel for claimant.

Ans. Yes.

39 Ques. Have you been consulted and addressed in all of this correspondence as one of the parties to the contract?

Objected to by counsel for claimant.

Ans. Generally so.

40 Ques. Was ever any steps taken by you as part owner of that cotton to remove it from Mississippi before it was taken by the officers for the Government?

Objected to by counsel for claimant.

Ans. No.

41 Ques. Or by anybody else?

Ans. No.

42 Ques. Did you ever ascertain how many bales of cotton were taken from the Morehead plantation by the Government troops and taken to Memphis and sold?

Objected to by counsel for claimant.

Ans. Yes.

43 Ques. How did you learn?

Objected to by counsel for claimant.

Ans. By going to Mississippi and finding out.

44 Ques. How did you learn in Mississippi what amount of Morehead's cotton was taken?

Objected to by counsel for claimant.

Ans. By the deposition of the overseer.

75 43 Ques. How many bales were taken?

Ans. Of Morehead's 454, four hundred and fifty-four.

44 Ques. Was not other cotton taken at the same time from same place and belonging to other parties?

Ans. Yes.

45 Ques. Do you know these facts from your own knowledge or from hearsay as to the cotton being taken and the place from which it was taken?

Ans. Both.

46 Ques. What personal knowledge have you on the subject of amount of cotton taken from Morehead?

Ans. From the returns at Memphis.

47 Ques. That was kept in G. L. Fort's return?

Ans. Yes.

48 Ques. Did that include all the cotton not included in the claim of the estate of Samuel Worthington, W. W. Worthington, E. M. Hammett, Nanette Switzer, and the Douglass estate?

Objected to by counsel for claimant.

Ans. I think so.

49 Ques. Would not the cotton belonging to the Miller estate taken from Wilson's barn be included in the 454 bales?

Objected to by counsel for claimant.

Ans. It is not.

The said witness was then cross-examined by the counsel for claimant, and, in answer to the interrogatories, testified as follows;

1 Cross-int. Have you been lying on the bed during the

76 taking of this deposition?

Ans. Yes.

2 Cross-int. Would you be able to write your own answers to the questions that have been propounded to you?

Ans. Yes.

3 Cross-int. Would you be able to sit up and undergo this examination?

Ans. I reckon I would.

4 Cross-int. Haven't you been half asleep most of the time during the giving of your deposition?

Ans. No.

5 Cross-int. Are you very weak and feeble?

Ans. Yes.

6 Cross-int. Were you present at the time the bill of sale was given by Morehead to Briggs for the cotton?

Ans. No.

7 Cross-int. Was the bill of sale an absolute sale of the property by Morehead to Briggs?

Ans. I thought so.

8 Cross-int. Did you have any arrangement with Morehead by which you acquired an interest in the property?

Ans. No, sir.

9 Cross-int. Did you acquire your interest from Briggs after he bought the property?

Ans. Yes.

10 Cross-int. How long after Briggs bought the property was it that you made your arrangement with Briggs? Was it about the time you arranged with Briggs to go South and help get the
77 property out?

Ans. Yes.

11 Cross-int. Do you remember what year it was that you and Briggs got the boat?

Objected to by counsel for defendant as leading and not cross-examination.

Ans. I think it was in 1862.

Excepted to by counsel for defendant.

12 Cross-int. What was the amount of debt due to Briggs by Morehead, about $25,000 or $30,000?

Objected to by counsel for defendant as leading and not allowing witness to state of his own knowledge.

Ans. Yes.

13 Cross-int. Did you have any arrangement with Morehead in regard to this matter whatever?

Ans. None.

14 Cross-int. Do you know of any arrangement with Walker and Morehead whatever?

Ans. No.

15 Cross-int. You were asked whether you had a conversation with Briggs in presence of Mr. Hull, in which Briggs is alleged to have said that he took the contract to secure himself, Walker, and yourself in certain debts and liabilities; now, is it not a fact, if that conversation occurred, that Briggs said that he would pay you for your services in getting out the cotton, and that he would pay you any loss you might sustain on your liabilities?

Ans. Yes.

78 16 Cross-int. Morehead was no party to that arrangement?

Ans. No.

17 Cross-int. It was made with Briggs some time after he bought the cotton?

Ans. Yes.

18 Cross-int. Wasn't Briggs' debt satisfied by the transfer of the cotton?

Objected to by counsel for defendant.

Ans. I suppose it was.

19 Cross-int. Did Briggs ever set up any claim against Morehead on account of the debts after that time?

Objected to by counsel for defendant as not cross-examination and leading and suggestive.

Ans. Not that I know of.

20 Cross-int. Do you know whether or not Morehead set up any claim to the cotton after he sold it to Mr. Briggs?

Ans. Never; I don't think he did.

21 Cross-int. Do you remember whether you saw Mr. Morehead after he came back from France?

Ans. I don't think I did.

22 Cross-int. In your former deposition I find the following question and your answer:

Ques. "Have you any knowledge of the general character of the consideration paid by Briggs to Morehead for this cotton?" Your answer was: Yes; I know of his paying $8,000 or $10,000 commercial and bank debts for his uncle, and I know of his uncle
79 having borrowed at one time $5,000, which he got from the State of Kentucky for running the boundary line between Kentucky and Virginia. I recollect these two items because they were large ones; he was constantly borrowing money from his nephew while they were practicing law together. Have you any recollection of those two items you mentioned in your former deposition?

Ans. Not particularly so.

23 Cross-int. Your recollection is not as good as it was at that time?

Ans. I reckon not. It is a long time ago.

24 Cross-int. You were asked whether or not you have had correspondence with Mr. Moberly in regard to this matter. Now, I will ask whether Mr. Moberly has not other business matter in his hands as your attorney.

Objected to by counsel for defendant as immaterial and not cross-examination.

Ans. Yes.

25 Cross-int. Has your correspondence with Mr. Moberly related principally to your private matters?

Objected to by counsel for defendant.

Ans. Yes; and this cotton case.

And thereupon the said SHOTWELL was re examined by the counsel for defendant, and in answer to question- on redirect examination testified as follows:

Redirect examination:

1 Ques. You were asked if you were lying on the bed during the taking of this deposition. Are you able to sit up?

Ans. Yes.

80 2 Ques. You have been sitting up during the day?

Ans. Yes.

3 Ques. You are dressed now and merely lying on the outside of the bed, with your clothes on?

Ans. Yes.

4 Ques. You sit up most of the time during the day?

Ans. Yes. There's nothing the matter with me that money would not cure. I am only weak.

5 Ques. You may state when it was that you and Briggs had your talk in which Briggs said the cotton was transferred to pay debts.

Ans. I don't remember dates; it's been so long ago.

6 Ques. How much was due from Morehead to Briggs in April, 1862?

Ans. I can't say, because I don't know.

7 Ques. Was Briggs prior to 1865 or 1868 able to loan any amount of money, and was he not poor?

Ans. I don't remember dates, but he never had anything much until he went into that lottery business. He made money like a house afire when he went into that lottery business.

8 Ques. Do you remember the year that lottery business began?

Ans. I do not.

9 Ques. Was not the money that Briggs let Morehead have furnished while Morehead was in Europe?

Ans. Some of it was.

10 Ques. Was not the greater part of it?

Ans. I don't remember.

81 11 Ques. Do you know that any portion of the debt was paid by the transfer of the cotton from Morehead to Briggs?

Ans. I understood the cotton paid the debt.

12 Ques. From whom did you understand that?

Ans. From Briggs.

13 Ques. Was that ever talked over between you and Briggs?

Ans. I don't remember.

14 Ques. You have no knowledge of any claims or business transactions of any kind between Morehead and Briggs after Morehead went away in 1861?

Ans. I have no recollection of anything of the sort.

15 Ques. Did Charles M. Briggs ever run a line between Kentucky and Virginia, and when?

Ans. Yes; don't recollect the date.

16 Ques. Has the line between Kentucky and Virginia ever been run since 1793 by anybody?

Ans. I don't think it has.

17 Ques. Was not the line to which you refer the line between Kentucky and Tennessee?

Ans. I don't remember whether it was the line between Kentucky and Tennessee or the line between Kentucky and Virginia. I had the impression it was the line between Kentucky and Tennessee.

18 Ques. Was not the line between Kentucky and Tennessee, called the Walker line, run in 1858 to 1859?

A. I don't remember.

19 Ques. Did Charles S. Morehead and Charles M. Briggs
82 practice law together after 1861?

Ans. I don't remember.

20 Ques. Did they practice law together after Morehead was arrested?

Ans. Yes.

21 Ques. When and where?

Ans. I don't think that Briggs and Morehead ever did dissolve until Morehead died.

22 Ques. Did Morehead ever live in Louisville after his arrest in 1861?

Ans. I don't remember it.

A. L. SHOTWELL.

I, Michael Muller, a notary public in and for Hamilton county, Ohio, certify that at the time and place aforesaid A. L. Shotwell, a witness on behalf of the defendant in the above entitled cause, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to said cause, and that his answers were taken down in my presence and his deposition, as above set forth, was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 8th day of April, 1893.

MICHAEL MULLER,

[SEAL.] *Notary Public in and for Ham. Co., Ohio.*

83 *Deposition of A. L. Shotwell on Behalf of Claimant.*

Filed March 5, 1889.

Depositions of witnesses produced, sworn, and examined at the hour of one and a half o'clock p. m. on the 28th day of February, 1889, at the office of Clarence E. Walker, No. 518 West Jefferson street, in the city of Louisville, county of Jefferson and State of Kentucky, before me, the undersigned, a notary public, in a certain cause now pending in the Court of Claims, wherein James A. Briggs, executor of C. M. Briggs, deceased, is claimant and The United States are defendants, when were present W. J. Moberly, counsel on behalf of the claimant, and Judge Wickliffe, counsel on behalf of the defendants.

ALFRED L. SHOTWELL, having been produced as a witness on behalf of the claimant, was by me sworn before any question was put to

him to tell the truth, the whole truth, and nothing but the truth relative to the said cause; and thereupon deposed and said that his name is Alfred L. Shotwell; that his occupation is ——; that he is seventy-nine years of age; that his place of residence is Louisville, Ky.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause, and that he is not related to the claimant.

And thereupon the said Alfred L. Shotwell was examined by the counsel for the claimant, and in answer to interrogatories testified as follows:

Q. State your name, age, and residence.

84 A. My name is Alfred L. Shotwell. I am seventy-nine years old. I consider Louisville my residence, although I have been down at Hopkinsville for the last nine years. I have never given up Louisville as my home and don't expect to.

Q. In what business were you engaged and where at the breaking out of the war of the rebellion and for how long a time prior to that?

A. I was in the commission business, a commission merchant, in the city of Louisville from 1844 up to the breaking out of the war and during its continuance up to 1862.

Q. Were you acquainted with Charles M. Briggs and Charles S. Morehead?

A. Yes, sir.

Q. How intimately and for what length of time?

A. I knew Charles S. Morehead for forty years, I reckon, and Briggs for the last ten years before his death.

Q. Do you know what year Briggs died?

A. I do not remember exactly. I think about 1868, though I do not recollect. Those papers will tell.

Q. Have you any knowledge by the admission of statements of Charles S. Morehead and by the claim of Briggs to the same effect of a sale of a certain lot of cotton by Morehead to Briggs about the opening of the war?

A. Yes, sir.

Q. State any facts within your knowledge.

A. I recollect Morehead sold Briggs all the cotton he raised on his plantation in 1862 and gave him an order or bill of sale

85 for it, and Briggs' preparation to go down and get it, and his interception by Gen. Grant's military order, the military having seized the cotton and carried it off to Memphis and sold it and returned it into the Treasury of the United States before he could do anything in regard to its recovery.

Q. Have you any knowledge of the general character of the consideration paid by Briggs to Morehead for this cotton?

A. Yes; I know of his paying eight or ten thousand dollars—commercial and bank debts—for his uncle, and I know of his uncle having borrowed at one time from him $5,000 which he got from the State of Kentucky for running the boundary line between Kentucky and Virginia. I recollect those two items, because they were

large ones. He was constantly borrowing money from his nephew while they were practicing law together. He got all the fees or the principal collections.

Q. Do you identify the paper which I now hand you as a copy of an affidavit made by you in this case?

A. Yes, sir.

Q. And are you willing to make it a part of your present deposition?

A. Yes, sir.

The paper handed the witness, in three sheets and a portion of a fourth, is filed herewith as part hereof and marked for identification with the style of this cause and "Exhibit No. 1 with the deposition of Alfred L. Shotwell, February 28th, 1889, Clarence E. Walker, notary public, &c."

86 Q. Do you know at what place Morehead's bill of sale for this cotton to Briggs was executed?

A. I think it was done here, in the office on Jefferson street. It was Guthrie's office. It was done here in Louisville, in their law office.

Q. Were or not Briggs and Morehead at the date of the execution of this bill of sale both residents and citizens of the State of Kentucky?

A. Yes.

Q. Under what firm name or style were you engaged in business in Louisville at that time?

A. A. L. Shotwell & Son.

Q. Who was the son in that firm?

A. Stephen B. Shotwell, my oldest son.

Q. Is Stephen B. Shotwell living or dead?

A. Dead.

Q. Were you intimately acquainted with Charles M. Briggs during and subsequent to the war and up to the time of his death?

A. Yes.

Q. Do you know his reputation as a genuinely loyal man? If so, state what it was.

A. Yes; he was unquestionably a Union man as the term was in those days. His father was a strong Union man at Bowling Green and was medical director there, and the son was equally as much so as the father.

Q. Medical director in the Federal army?

A. Yes, at Bowling Green.

87 Q. Was his character as a thoroughly loyal Union man ever called in question by his intimate acquaintances in Louisville?

A. None that ever I heard of.

Q. From his prominence in business and social circles if he had been a man of questionable loyalty would not you have reasonably known it?

A. Yes; I think I would.

Q. Do you know of Briggs, subsequent to the purchase of this

cotton from Morehead, having purchased an interest in a steamboat, and for what purpose?

A. Yes; he arranged with Mr. Ford, of New Albany, about a boat to go down after the cotton and had to give it up because of this order of Gen. Grant's taking it away from him.

The witness was then cross-examined by counsel for the United States, and in answer to interrogatories testified as follows:

Q. What was the date of this bill of sale? Do you know?

A. I do not remember; it has been a good while ago. It was somewhere in 1862, I think.

Q. Where was the cotton of Morehead located?

A. It was in Washington county, Mississippi; near Eggspoint.

Q. Above or below Vicksburg?

A. Above.

Q. How far?

A. About one hundred miles, I think. It is forty miles from Vicksburg to Providence and sixty miles from there to Eggspoint.

88 Q. What obstruction was there between Louisville and Eggspoint at this time that would prevent the bringing of that cotton from Eggspoint to Louisville?

A. I suppose the war was in full blast then. There was no intercourse between the South and Kentucky as early as 1862.

Q. At this time did not the Union forces have the exclusive control of the river—the Ohio and Mississippi—from Louisville to Vicksburg?

A. I think so.

Q. Did Briggs go South during the war?

A. I think not; I don't remember that he ever did.

Q. Where was he, to your knowledge, from the time he bought the cotton from Morehead until the close of the war?

A. Here in Louisville.

Q. In what business was he engaged?

A. I do not know whether he was secretary or what capacity, but he was assisting Col. Durrett in this public library enterprise which was on foot then.

Q. Is Col. Durrett still living and a citizen of this town?

A. Yes, sir.

Q. You say you consider Louisville your home?

A. Yes, sir.

Q. How long has it been since you actually lived in Louisville?

A. I have not actually lived here since about 1874.

Q. How far from Louisville have you resided since 1874?

89 A. As low down as Henderson, about one hundred and eighty miles. I lived there with my daughter for a year or two and then I went to Hopkinsville, in 1879, and have stayed there until now.

Q. You say you regarded Briggs as a loyal man. Please state anything that you know of your own knowledge which he said or

did which would indicate he was a loyal man to the United States Government during the war.

A. I do not remember any particular declaration on the subject.

Q. Do you remember any act or deed of his which would indicate that he was a loyal citizen at that time?

A. No; I do not know that I do. He was engaged in this library business, trying to sell the tickets and bring about the drawing, and I think his whole heart and soul was in trying to develope that scheme, and I never heard of him bothering himself about anything else.

Q. Was he an able-bodied man?

A. Yes, sir.

Q. Was he ever drafted in the service of the Unites States Army?

A. I never heard of it.

Q. Did he ever volunteer?

A. Not that I know of.

Q. Where did Briggs live from the breaking out of the war up to the time of his death?

A. In Louisville.

Q. What business was he engaged in other than that of
90 assisting Col. Durrett in this lottery business?

A. He was practicing law with his uncle.

Q. You mean Charles S. Morehead?

A. Yes, sir.

Q. How long after the war did he practice law here, if at all, with his uncle, Charles Morehead?

A. I think three or four years.

Q. When did he die?

A. I don't remember the date, but I suppose it was somewhere in the sixties—1867 or 1868.

Q. What family and connections by blood or marriage did he leave here in the city of Louisville at his death, so far as you know?

A. He left some children, but I do not know how many. He married a second wife, a Miss Blanchard, and she had brothers and sisters here, but I do not remember how many.

Q. How long did they live in Louisville after his death, his wife's brothers and sisters?

A. I think they live here now, the survivors.

Q. Can you give any idea of the number of them?

A. No, sir. I recollect two of the boys; one was George and one was Alfred.

Q. How old are they now to the best of your knowledge?

A. I suppose from forty-two to forty-five; along there.

Q. They still live in the city of Louisville?

A. I have not been about here enough lately to keep the hang of things and people. I saw Ab. Blanchard when I was here
91 three or four years ago; but it further runs in my mind that George is dead, but I do not recollect that.

The said witness was then re-examined by counsel for the claimant, and in answer to interrogatories testified as follows:

Q. Is it not a fact that Briggs, prior to his death, was a member of a prominent law firm who were his associates?

A. Yes; he was in partnership with Col. Durrett and Gov. Bramlette, under the style of Bramlette, Durrett & Brigg, and they did a large business.

Q. During his residence in Louisville, subsequent to the breaking out of the war, was not his prominence in business and social circles such that his reputation would have been generally known to the citizens as a loyal or disloyal man?

A. Yes; I think so.

Q. Would you or not have known what that reputation was in the community?

A. I think so.

Q. And from your knowledge you can state without qualification that he was in fact loyal to the Government of the United States?

A. Yes; I don't think there was any doubt about it.

Q. Do you know of Briggs in person or associated with others having been engaged in trade within the Federal lines during the war and under permit from the military authorities and other Government officials?

A. Yes; I heard of him being permitted to trade within the lines.

Counsel for the Government objected to the evidence as to what the witness had heard.

Q. Has or not your absence from Louisville and residence
92 in Hopkinsville that you have referred to been brought about by your holding an official position under the State?

A. Yes, sir.

The said witness was then recross-examined by counsel for the United States, and in answer to interrogatories testified as follows:

Q. How often have you visited Louisville since you moved away from here in 1874?

A. I have been here every year or two since.

Q. How long would you stay?

A. Sometimes a month and sometimes a week.

Q. Is Reuben T. Durrett, Briggs' former partner, still alive and a resident of the city?

A. Yes, sir.

Q. Are the men with whom he associated in business and who were as well-acquainted with him and had as good opportunities as you to know him a good many of them in the city still alive?

A. I think so.

Q. How many men would you say are now living in the city of Louisville who had as good opportunities as you of knowing whether Briggs was loyal or not loyal during the war?

A. I think they are nearly all dead. Most everybody that was in active business when I was here was gone.

Q. Is not Thomas L. Barrett, the president of the Bank of Kentucky, still alive?

A. Yes, sir; and so is Dick Veech, of the Farmers' and Drovers' bank, and Col. Durrett and James Bridgeford. There is a
93 right smart sprinkling of them still alive and residing here.

The said witness was then re-examined by counsel for the claimant, and in answer to interrogatories testified as follows:

Q. Do you know positively that there were any such relations between Briggs and any one of the men named as would give them an opportunity to state positively one way or the other whether or not he was loyal?

A. I take it for granted.

Q. Do you know?

A. I do not know.

Q. State whether you know of any other matter relative to the claim in question. If so, state it.

A. No, sir.

A. L. SHOTWELL.

Affidavit of S. J. Walker—"Exhibit B."

Filed August 25, 1888.

STATE OF ILLINOIS, }
Cook County. }

Personally appeared before me, a notary public in and for the county and State aforesaid, Samuel J. Walker, who, being *od* lawful age and duly sworn, says he is a resident of Covington, Ky. He says he is a son-in-law of ex-Gov. C. S. Morehead and was intimate with him since 1857 until his death, in 1868. He was his counsellor, advisor, and friend. He says he very frequently heard said Morehead talk of his indebtedness to Charles M. Briggs prior to 1862.

In all of his conversations on this subject he said he was in-
94 debted to said C. M. Briggs largely for moneys advanced and liabilities as surety for him, and in April, 1862, a bill of sale was written by this affiant of all of said Morehead's cotton on his two cotton plantation-, in Washington county, Miss., near Eggspoint, which was done as evidence of a *bona fide* sale and transfer to said C. M. Briggs of the same and for the purposes specified in said writing.

Affiant states that the said transfer of the cotton, as specified in the writing, was absolute and *bona fide* on account of said liabilities and indebtedness existing prior to the date of said bill of sale; that the signature of C. S. Morehead thereto is true and genuien. Affiant has examined said bill of sale alladed to and has placed his mark "S. J. W." on the same, and files it, attached hereto as a part of this affidavit.

Given under my hand this the 7th March, 1872.

SAMUEL J. WALKER.

Witnesses:

J. F. KEENEY.

C. E. BRUNER.

Subscribed and sworn to before me by Samuel J. Walker this the 7th day of March, 1872.

ALBERT E. WARREN,
Notary Public.

STATE OF ILLINOIS, }
County of Cook. }

I, George W. Wheeler, clerk in and for said county of Cook and State of Illinois, certify that Albert E. Warren, whose name appears to the within affidavit, is and was at the time of signing a
95 duly qualified and acting notary public in and for said county, and his acts are entitled to full faith and credit.

Witness my hand and official seal this the 7th March, 1872.

[SEAL.] GEO. W. WHEELER,
Clerk pro Tem. Co. Court.

(Endorsement.)

EXHIBIT "B."

Is a resident of Covington, Kentucky. Is a son-in-law of C. S. Morehead, and very frequently heard M. acknowledge his indebtedness to Briggs prior to 1862. In April, 1862, affiant prepared a bill of sale (hereto attached) for all of the cotton on M.'s two plantations to Briggs, and the signature thereto is genuine.

COURT OF CLAIMS, WASHINGTON, D. C.

I certify that the foregoing are true copies of original testimony on file in said cause in this court.

Test this second day of March, A. D. 1895.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk C't of Claims.

At a court held on the 14th day of May, 1895—

Came defendants and cross-plaintiffs Amanda M. Walker and Ohio Valley Banking and Trust Company, administrator of Shotwell, by counsel, and filed a demurrer to the amendment to the answer of James Briggs, ex'or, to their cross-petition herein.
96 Ordered that said demurrer be and is submitted, and the court, not being advised, takes time.

Said demurrer is as follows, to wit:

Jefferson Circuit Court.

H. A. McLEMORE, G'd'n, Pl'ff, }
vs. } Demurrer.
JAS. BRIGGS, Ex'or, Def'ts. }

Defendants and cross-plaintiffs Amanda M. Walker and Ohio Valley Banking and Trust Co., adm'r of Shotwell, demur to the amendment to the answer of Jas. Briggs, executor, to their cross-

petitions, because it does not state facts sufficient to constitute a defense to them or either of them.

W. B. DIXON,
Att'y for O. V. Bk. & Trust Co.
HELM & BRUCE,
Att'ys for A. M. Walker.

At a court held on the 10th day of June, 1895—

It is ordered that the demurrer to the amended answer of James A. Briggs, executor, herein be and is sustained; to which said Briggs excepts.

At a court held on the 25th day of March, 1895—

Came James A. Briggs, executor, and Amanda M. Walker and the Ohio Valley Banking & Trust Co., administrator of the estate of Shotwell, deceased, all by counsel and all being parties to this action, and filed a statement signed by James A. Briggs, who is the executor of the will of Charles M. Briggs, deceased, to the effect that
97 he believes the signature of Charles M. Briggs to the paper upon which the claim of said Amanda M. Walker herein is based, and a copy of which is filed with her answer and cross-petition in this cause, the original having been exhibited to said James A. Briggs, is the genuine signature of his testator, to wit, Charles M. Briggs.

And thereupon it was agreed of record by said parties that the said statement of said James A. Briggs should be read as his deposition in this cause.

Said statement is as follows, to wit:

Chancery Division.

McLEMORE, Plaintiff,
vs.
BRIGGS, Defendant.

I, James A. Briggs, having examined the original instrument of writing which is set up in and a copy of which is filed with the answer of Amanda M. Walker herein, state that I am familiar with the handwriting of my testator, Charles M. Briggs, having often seen him write, and it is my belief that the signature "C. M. Briggs" to said instrument of writing is the genuine signature of my said testator, Charles M. Briggs, and I therefore withdraw the denial made by me in my answer that the said signature was his genuine signature.

March 23, 1895.

J. A. BRIGGS.

At a court held on the 15th day of July, 1895—

98 The court, being advised, delivered a written opinion, which is now filed herein.

Said opinion is as follows, to wit:

Jefferson Circuit Court, Chancery Division.

H. A. McLEMORE, Plaintiff,
vs.
JAS. A. BRIGGS, &c., Defendants. } Opinion in Chief.

The only question for decision is how to divide the $44,000 collected by the executor between the Briggs estate, Shotwell's administrator, and Mrs. Walker.

The undertaking of C. M. Briggs was to pay Shotwell "about $10,000 more or less, being a claim of A. I. Shotwell, as he may hereafter establish against C. S. Morehead."

Shotwell's administrator, by answer, counter-claim, &c., sets up that Morehead was indebted to Shotwell on various bills of exchange amounting in the aggregate to $6,680.80 without interest. He also sets up a debt of $2,000, arising from an award which he alleges Shotwell paid as surety for Morehead. There is no evidence to sustain this item of the claim, and hence it is disallowed. The evidence is considered sufficient to sustain the claim based on the bills of exchange. It is shown that Morehead executed them. The contention that one of these bills, to wit, for $1,552, should be disallowed for want of evidence to sustain the allegation that Shotwell paid it cannot be sustained, as the evidence is sufficient to show *prima facie* that Shotwell, the endorser, did pay and take it up.

99 The amount to be distributed is the amount admitted by the executor of Briggs in his pleadings to have been received by him, from which should be deducted 5 % thereon as the executor's commissions, and a reasonable sum as compensation for the services of his attorneys. The court will fix the amount of the attorneys' fee above stated after conference with counsel.

The claim of Mrs. Walker is for a definite sum, and is fully sustained by the evidence.

As the fund is insufficient to pay the principal of the claims entitled to share therein, no computation of interest on these claims is necessary.

The court has carefully read and reconsidered the question so ably argued by brief on behalf of J. A. Briggs, executor, and while the argument is pursuasive and the doctrine therein insisted on is not denied, under all the facts and circumstances of this case, claimants Mrs. Walker and Shotwell's administrator should not be estopped to assert their claim as against the estate of defendant's testator, and the court adheres to its former opinion on demurrer to the amended answer of Briggs, executor.

I. W. EDWARDS, *Judge.*

At a court held on the 15th day of July, 1895—

This action having been submitted in chief upon the pleadings and the proof on the cross-petitions of Amanda M. Walker and the Ohio Valley Banking and Trust Company, administrator of

100 the estate of A. I. Shotwell, deceased, against James A. Briggs, executor of the will of Charles M. Briggs, deceased, and the

court being sufficiently advised, it is considered and adjudged by the court:

First. That the instrument sued upon by Amanda M. Walker, a copy of which is filed with her answer and cross-petition as an exhibit therewith, was and it is the act and deed of Charles M. Briggs, deceased, and that it was assigned and delivered to said Amanda M. Walker by Samuel J. Walker, named therein.

Second. That Charles S. Morehead, mentioned in said instrument, was indebted, at the execution thereof, to said A. L. Shotwell, now deceased, in the sum of $6,681.21.

Third. That the said executor, James A. Briggs, is entitled, out of the funds admitted by him to have been collected by him as said executor from the United States Government, to receive and retain a commission equal to five per cent. upon $44,000, which is $2,200.

Fourth. That said Amanda M. Walker and said Ohio Valley Banking & Trust Company, administrator of the estate of A. L. Shotwell, deceased, are respectively entitled to recover of said James A. Briggs, executor aforesaid, such proportions respectively of the sum of $41,800 (being $44,000 less $2,200) as their respective demands against the estate, to wit, $40,000 and $6,681.21, bear to the aggregate of the three sums of $25,000, $40,000, and $6,681.21.

Fifth. It is therefore further considered and adjudged by the court
101 that said Amanda M. Walker recover of the said James A. Briggs, executor of the will of Charles M. Briggs, deceased, the sum of $23,325 and her costs herein expended, and that the Ohio Valley Banking and Trust Company, as administrator of the estate of A. L. Shotwell, deceased, recover of said James A. Briggs, executor of the will of Charles M. Briggs, deceased, the sum of $3,896 and its costs herein expended, on which judgment said Amanda M. Walker and said trust company may have executions, leviable, however, only upon the assets of the testator and said James A. Briggs, executor, now in his hands or which shall hereafter come to his hands.

Sixth. It is further considered and ordered by the court that said James A. Briggs, executor aforesaid, out of the funds in his hands as such executor, do pay into court in this action the aforesaid amounts for which judgment is hereby given respectively in favor of said Amanda M. Walker and said trust company, administrator as aforesaid, and that when said amounts shall have been paid into court the said Amanda M. Walker and said trust company, administrator as aforesaid, have leave to withdraw the amounts to which they are respectively entitled from the fund in court.

At a court held on the 5th day of August, 1895—

Came defendant James A. Briggs, executor of the will of Charles M. Briggs, by counsel, and moved the court to amend the judgment herein entered on July 15th, 1895, so as to allow him five per cent. commission on the full amount collected by him from the United
States, and said motion, having been heard, was by the court
102 overruled; to which said defendant excepts.

Came the defendant James A. Briggs, executor of the will

of Charles M. Briggs, and prayed an appeal from the judgment entered herein on July 15th, 1895, in favor of Amanda M. Walker and the administrator of A. L. Shotwell, deceased, which was granted.

The Commonwealth of Kentucky to any one authorized to take depositions in or out of this State:

Know ye that we, trusting to your fidelity and provident circumspection in diligently examining the witnesses for defendant Amanda M. Walker in a certain matter of controversy now depending and undetermined in our Jefferson circuit court wherein H. A. McLemore, g'd'n, is plaintiff and James A. Briggs, ex'or, &c., are defendants, do command you that at such certain days and place as you shall appoint, the witness aforesaid you shall call and cause to come before you and then diligently examine on oath in answer to the interrogatories hereunto annexed, and upon examination in our said court, distinctly and plainly, without delay, you shall send and certify, enclosed and sealed, returning also to us this commission.

Witness John S. Cain, clerk of said court, this 18th day of Feb., 1895.

JOHN S. CAIN, *Clerk*,
By L. MALONEY, *D. C.*

Jefferson Circuit Court, Chancery Division.

103 H. A. McLEMORE, Guardian, Plaintiff,
vs.
JAMES A. BRIGGS, Executor, &c., Defendant.

Deposition of Amanda M. Walker, taken before me in the city of Chicago, Illinois, on the 21st day of February, 1895, to be read as evidence in her behalf in the above-styled action pending in the Jefferson circuit court of Kentucky, said deposition being taken pursuant to the annexed commission and interrogatories.

1. State your name, age, and residence.

A. My name is Amanda M. Walker. I am 60 years of age, and reside at 462 Elm street, Chicago, Illinois.

2. Are you the defendant and cross-plaintiff Amanda M. Walker in this action?

A. I am.

3. What relation, if any, was C. S. Morehead to you, and did he or not hold any public office in Kentucky; if so, what? The said Morehead being the party mentioned in the written instrument purporting to be signed by C. M. Briggs, a copy of which is filed by you with your answer, counter-claim, and cross-petition in this action.

A. The C. S. Morehead mentioned in the third interrogatory was my father. He did hold public office in Kentucky just before the

late war, the office being that of governor of the State of Kentucky.

4. Who is Samuel J. Walker, who is also named in the said written instrument. Is he or was he connected in any way with you, and is he living or dead?

104 A. The Samuel J. Walker mentioned in the said written instrument was at and before the date of it a business man residing in the city of Covington, Kentucky. He was a man of considerable financial means, interested in various enterprises, and owned large property interests in the cities of Chicago and Covington and elsewhere. He was my husband from October, 1858, until his death. He died April 16th, 1884.

5. State whether or not you now have in your possession the original instrument which is the basis of your claim in this action and of which your purport to file a copy with your answer, counterclaim, and cross-petition therein; if so, state how you obtained possession thereof and how long you have had such possession.

A. I have in my possession the original instrument mentioned in the fifth interrogatory. I obtained possession of it by assignment and delivery from my husband, Samuel J. Walker. I have had possession of it for more than twenty-five years.

6. State whether or not you are familiar with the handwriting and signature of Samuel J. Walker, whose name purports to be endorsed upon the said instrument; if so, then state whether or not the endorsement of the name of Samuel J. Walker upon said instrument is his genuine endorsement.

A. I am familiar with the handwriting and signature of Samuel J. Walker, whose name purports to be endorsed upon said instrument, having seen him write his signature frequently. The endorsement of the name Samuel J. Walker upon said instrument is his genuine endorsement.

105 7. State whether or not said instrument was delivered to you by said Samuel J. Walker.

A. The said instrument was delivered to me by said Samuel J. Walker.

8. State whether or not you are now the holder and owner of the said instrument and entitled to the benefits thereunder.

A. Yes; I am now the holder and owner of said instrument and entitled to the benefits thereunder.

9. Were you or not acquainted during his lifetime with C. M. Briggs, whose name purports to be signed to the said instrument? Are you or not familiar with his handwriting and signature? What have been your opportunities for becoming thus familiar?

A. Yes; I was acquainted with the C. M. Briggs mentioned. I am familiar with his handwriting and signature. I have seen many letters from him to my husband in his lifetime, in answer to letters which my husband had written Mr. C. M. Briggs. I am also familiar with his handwriting and signature from having received letters from him myself in answer to personal letters written to him by me.

10. State whether or not the name of C. M. Briggs signed to the original instrument is the genuine signature of said C. M. Briggs.

A. It is the original signature of the said C. M. Briggs.

11. State if you know whether or not C. S. Morehead was indebted to Samuel J. Walker in any sum—if so, in what sum—at the
106 time of the execution of the said writing from C. M. Briggs to Samuel J. Walker, and if you say any such indebtedness did then exist, state whether or not it or any part of it has ever been paid.

A. Yes; C. S. Morehead was very largely indebted to Samuel J. Walker at the time of said writing from C. M. Briggs to Samuel J. Walker. I do not know the exact amount, but do know that it was upwards of the sum of $40,000. No part whatever of said indebtedness was ever paid.

12. State whether or not the paper filed with the pleading of Mrs. Walker herein as a copy of said instrument purporting to be signed by C. M. Briggs is a true copy of *said instrument purporting to be signed by C. M. Briggs is a true copy of* said instrument.

A. The paper filed with my pleading herein *is* a copy of said instrument purporting to be signed by C. M. Briggs is a true copy of said instrument.

AMANDA M. WALKER.

Answers to cross-interrogatories addressed to the defendant Amanda M. Walker, a resident of Chicago, Illinois, by the Ohio Valley Banking and Trust Company, administrators of A. L. Shotwell, deceased.

1. You recently examined in the office of R. G. Dunn & Co., in Chicago, the bills of exchange purporting to have been drawn and accepted by C. S. Morehead, and which bills are filed as exhibits with the answer of the Ohio Valley Banking and Trust Company, administrator of A. L. Shotwell, dec'd, in this case, did you not?

A. Yes.

107 2. Is it not true that the signatures "C. S. Morehead" on those bills of exchange are all in the handwriting of your father, Governor S. S. Morehead?

A. Yes.

3. Are you acquainted with your father's handwriting and signature from having seen him write or from having corresponded with him or from having seen writing purporting to be his and recognized as such by him?

A. I am familiar with my father's handwriting and signature, both from having seen him write and having corresponded with him.

AMANDA M. WALKER.

Interrogatories by Clerk.

1. What is your age, occupation, and place of residence?

A. My age is 60 years. I have no occupation. My place of residence is 462 Elm street, Chicago, Illinois.

2. Are all your statements in the foregoing answers made from your personal knowledge? If not, which of them are made from information or belief and what is your source of information or foundation of your belief?

A. All statements in the foregoing answers made by me are made from my personal knowledge.

3. Have you any interest in this action, direct or indirect? If any, what is it?

A. Yes; I have an interest in this action. It is set forth in the pleading filed by me in this case.

4. Have you stated all you know concerning this action? If not, state what you have omitted.

108 A. Yes.

COUNTY OF COOK, }
State of Illinois. }

I, Charles M. Sherman, a notary public in and for the State and county aforesaid, do hereby certify that the foregoing deposition of Amanda M. Walker was taken before me at the time and place mentioned in the caption thereof; that the witness was duly sworn before giving it; that it was written by me in her presence and read to and subscribed by her in my presence, and that none of the parties to the action, except the said witness herself, was present in person or by agent or attorney during the examination of the witness.

Witness my official seal and signature this 21st day of February, 1895.

[SEAL.] CHARLES M. SHERMAN,
Notary Public.

The Commonwealth of Kentucky to any one authorized to take depositions in or out of this State:

Know ye that we, trusting to your fidelity and *pr*vident circumspection in diligently examining the witnesses for Amanda M. Walker in a certain matter of controversy now depending and undetermined in our Jefferson circuit court, wherein H. A. McLemore, g'd'n, — plaintiff and Jas. A. Briggs, ex'or, &c., defendants, do command you that at such certain days and place as you shall appoint the witnesses aforesaid you shall call and cause to come be-

109 fore you, and then diligently examine on oath in answer to the interrogatories hereunto annexed, and upon examination in our said court, distinctly and plainly, without delay, you shall send and certify, enclosed and sealed, returning also to us this commission.

Witness John S. Cain, clerk of said court, this 18th day of Feb., 1895.

JOHN S. CAIN, *Clerk*,
By L. MALONEY, *D. C.*

Jefferson Circuit Court, Chancery Division.

H. A. McLEMORE, Guardian, Plaintiff,
vs.
JAMES A. BRIGGS, Executor, &c., Defendant.

Deposition of Charles M. Walker, taken before me in the city of Chicago, Illinois, on the 21st day of Feb., 1895, to be read as evidence in behalf of Amanda M. Walker in the above-styled action pending in the Jefferson circuit court of Ky., said deposition being taken pursuant to the annexed commission and interrogatories.

1. State your name, age, residence, and occupation.

A. My name is Charles M. Walker. I am 34 years of age. I reside in the city of Chicago, Illinois, and am by occupation a lawyer.

2. Are you *are* not kin to the claimant herein, Amanda M. Walker?

A. Yes; I am kin to claimant Amanda M. Walker. I am her son.

3. Are you or not familiar with the signature of your
110 father, Samuel J. Walker; and, if so, what were your opportunities for thus becoming familiar with this signature?

A. Yes; I am familiar with the signature of my father, Samuel J. Walker. My opportunities for thus becoming familiar with it were many. I have seen him write it very frequently, and I am also familiar with it from having received many letters from him in answer to others which I had written to him personally.

4. State whether or not the signature of Samuel J. Walker endorsed upon the writing purporting to be signed by C. M. Briggs and endorsed by Samuel J. Walker, and which is the foundation of Amanda M. Walker's claim in this action, is the genuine endorsement of Samuel J. Walker.

A. The signature of Samuel J. Walker upon the writing purporting to be signed by C. M. Briggs and endorsed by Samuel J. Walker, and which is the foundation of Mrs. Amanda M. Walker's claim in this action, is the genuine endorsement of Samuel J. Walker.

5. State if you know whether or not the said instrument was endorsed by Samuel J. Walker or by him assigned or delivered to Mrs. Amanda M. Walker.

A. Yes; the said instrument was endorsed by Samuel J. Walker, my father, and by him delivered to Mrs. Amanda M. Walker.

6. If so, state whether or not the same was assigned and delivered to her for her benefit, and state whether or not the same has since been held and owned and is now owned by her for her own benefit.

111 A. Yes; it was assigned and delivered to her for her benefit, and has since been held and owned and is now owned by her for her own benefit solely.

7. State whether or not the paper filed with the pleading of Mrs. Walker here *is* a copy of said instrument purporting to be signed by C. M. Briggs is a true copy of said instrument.

A. Yes; the paper filed with the pleading of Mrs. Amanda M. Walker herein as a copy of such instrument purporting to be signed by C. M. Briggs is a true copy of such instrument.

CHARLES M. WALKER.

Interrogatories by Clerk.

1. What is your age, occupation, and place of residence?

A. My age is 34 years; occupation, that of a lawyer. I reside in the city of Chicago, Illinois.

2. Are all your statements in the foregoing answers made from your personal knowledge? If not, which of them are made from information or belief, and what is your source of information or foundation for your belief?

A. All the statements in the foregoing answers are made from my personal knowledge.

3. Have you any interest in this action, direct or indirect? If any, what is it?

A. I have no interest in this action whatever.

4. Have you stated all you know concerning this action? If not, state what you have omitted.

A. Yes.

CHARLES M. WALKER.

112 COUNTY OF COOK, }
State of Illinois. }

I, Charles M. Sherman, a notary public in and for the State and county aforesaid, do hereby certify that the foregoing deposition of Charles M. Walker was taken before me at the time and place mentioned in the caption thereof; that the witness was duly sworn before giving it; that it was written by me in his presence and read to and su-scribed by him in my presence, and that none of the parties to the action was present in person or by agent or attorney during the examination of the witness.

Witness my official seal and signature this 21st day of February, 1895.

CHARLES M. SHERMAN,
Notary Public.

[SEAL.]

STATE OF KENTUCKY, }
County of Jefferson, } *ss:*

In the Jefferson Circuit Court, Chancery Division.

H. A. MCLEMORE, Guardian, }
vs. }
JAMES A. BRIGGS, Executor. }

The plaintiffs and defendants in the above-entitled cause are hereby notified that on the 28 day of December, 1894, at the office of S. B. & R. D. Vance, in Henderson, Ky., between the hours of 8 o'clock a. m. and 6 o'clock p. m. of said day, the def't Ohio Valley

Banking and Trust Company will proceed to take the deposition of A. A. Conway and B. G. Witt to be read as evidence on the trial of said cause, and that the taking of the same will, if necessary,
113 be continued from day to day (Sundays excepted) until finished.

Dated this 24 day of December, 1894.

S. B. & R. D. VANCE AND
W. B. DIXON,
Attorneys for Ohio Valley Bkg. & Trust Co.

We acknowledge service of the above notice this the 24 day of December, 1894.

HELM & BRUCE,
Att'ys for Walker.
GIBSON & MARSHALL,
Attorneys for Def't, J. A. Briggs, Ex'or.

The deposition of B. G. Witt, taken at the office of S. B. & R. D. Vance, Henderson, Ky., on the 28th day of December, 1894, to be used as evidence on behalf of the Ohio Valley Banking & Trust Co., adm'r of A. L. Shotwell, dec'd, in a suit pending in Jefferson circuit court, chancery division, wherein H. A. McLemore, g'd'n., &c., is plaintiff and James A. Briggs, executor of Chas. M. Briggs, dec'd, is defendant, and in pursuance of the notice hereto attached.

The said witness, being of lawful age and first duly sworn, deposed as follows:

Examined by S. B. VANCE, for adm'r:

Ques. # 1. What relation, if any, do you sustain to the Ohio Valley Banking & Trust Co., adm'r of the estate of A. L. Shotwell, dec'd?

Ans. Cashier.

Ques. # 2. Are you the same B. G. Witt by whom the affidavit to the answer of said Ohio Valley Banking & Trust Co., in the
114 case of McLemore, g'd'n, *vs.* J. A. Briggs, ex'r of Chas. M. Briggs, here shown you, was made?

Ans. Yes, sir.

Ques. # 3. Examine the batch of papers here shown you, endorsed: 34308. H. A. McLamore, g'd'n, *vs.* C. M. Briggs, ex'r. Exhibit with ans., &c., of the Ohio Valley Banking Co., adm'r. 1894, Oct. 19, filed in court, and being the exhibit filed with the answer of the Ohio Valley Banking & Trust Co., adm'r of A. L. Shotwell, dec'd, to the cross-petition of Briggs, ex'r, in the said suit, and state if exhibits were ever in your possession; if so, in what capacity did you have them and from whom were they obtained.

Ans. They were in my possession as cashier of the Ohio Valley Banking & Trust Co., adm'r, and were given me by Mrs. Conway, and given by me to the attorneys of the trust Co. as exhibits to be filed with that answer. All the papers in this batch were given me by Mrs. Conway, except the affidavit and account.

Cross-examined by M. YEAMAN, att'y for Mrs. Amanda M. Walker:

Ques. # 1. When were these papers filed with this answer and counter-claim of the Ohio Valley Banking & Trust Co. given to you?

Ans. It was about June, 1893, I think. It was soon after the Ohio Valley Banking & Trust Co. qualified as adm'r.

B. G. WITT.

115 *Also the Deposition of Mrs. A. A. Conway, Taken at the Same Time and Place and for the Purposes Mentioned in the Caption.*

Examined by S. B. VANCE, for adm'r:

Ques. # 1. Are you the same Mrs. Conway referred to in the deposition of B. G. Witt as the person who gave him the exhibits filed in this suit with the answer of A. L. Shotwell, adm'r, to cross-petition of Briggs, ex'r?

Ans. I am.

Ques. # 2. What relation are you to said A. L. Shotwell?

Ans. His second daughter and only child living now.

Ques. # 3. Who composed the firm of A. L. Shotwell & Son?

Ans. A. L. Shotwell was principal and he took his son in to help him along. S. B. Shotwell was his son.

Ques. # 4. Is his son, S. B. Shotwell, living; if not, when did he die?

Ans. No, sir; he died in 1884 or 1885.

Ques. # 5. Where did he reside at the time of his death?

Ans. Louisville, Ky.

Ques. # 6. Where was the home of A. L. Shotwell at the time of his death?

Ans. He died in Cincinnati, but his residence was at my house here in Henderson.

Ques. # 7. Where did you get the papers filed in this case and which were given by you to Mr. Witt?

Ans. They were brought to me by Mrs. H. H. Chappell, with his trunk and clothes, when she came from Cincinnati on a visit. He died at her house.

Ques. # 8. Are you acquainted with the handwriting of A. L. Shotwell from having seen him write?

116 Ans. I am.

Ques. # 9. Examine the words A. L. Shotwell & Son, endorsed on the bill of exchange filed with the answer of his ad'm'r, being for $3,000.00, dated Oct. 1st, 1859, signed C. S. Morehead and payable six months after date to A. L. Shotwell & Son; also the same words endorsed on bill of exchange filed with said answer for $1,552.40, signed C. S. Morehead, dated Nov. 15th, 1860, and payable four months after date to order of ourselves, and say in whose handwriting the said words are.

Ans. They are father's handwriting, A. L. Shotwell.

Ques. # 10. Are you acquainted with the handwriting of C. S. Morehead from having seen him write or from having seen writing which he recognized as his own?

Ans. I have seen his writing. I know his writing when I see it.

Ques. # 11. Examine the signature of C. S. Morehead to the several bills of exchange in the batch of papers filed with the adm'r's answer in this case and state in whoce handwriting they are.

Ans. All Governor Morehead'-, as far as I know. I am certain of it. I would swear *ot* it.

Ques. # 12. Did you ever see any of these papers in the possession of your father in his lifetime; if so, which of them and how long before his death?

Ans. I have had them read to me half a dozen times at least and have seen them in his trunk as many time- as I have fingers and toes. He left our house in July, 1892, and died in April, 1893.

117 Cross-examined by M. YEAMAN, for Mrs. Walker:

Ques. # 1. You are the daughter of A. L. Shotwell and sister of S. B. Shotwell?

Ans. Yes, sir.

Ques. # 2. When did I understand you to say S. B. Shotwell died?

Ans. He dropped dead in Louisville in June. I do not know the exact year. Mr. Tate died — 1886, and it was before that. It may have been June, 1886, for all I remember.

Ques. # 3. Where was S. B. Shotwell's home at the time of his death?

Ans. Louisville.

Ques. # 4. How long had he lived there?

Ans. Ever since I was a year old. I am 51 years, 1 month, and something. He was just my age when he died.

Ques. # 5. When did you say your father, A. L. Shotwell, died?

Ans. I think he died 18th April, 1893.

Ques. # 6. Where was his home when he died?

Ans. My house.

Ques. # 7. How long had he lived with you?

Ans. He came there soon after I came here. I was taken with a terrible disease, and father came to take care of me. He staid there until he was appointed receiver of the asylum, and lived there ni..e years. I think he went there in 1879, and then he came back to our house. His home was always my house. He would come backwards and forwards.

Ques. 8. When did you first see these bills of exchange?

Ans. Oh, Lord knows; I have seen them all my life. The
118 last time I saw them was just before father went to Cincinnati. When they were first made out father came home and read them to the family. I was only sixteen years old when I married, and I married in the spring of 1861, and I was not over fourteen years when they were written.

Ques. 9. Why did your father read them over to you so often?

Ans. He was always thinking about geeting this money and hoping to get it, and he would get a letter from Moberly and everything was in common with us at home and talked about.

Ques. # 10. Were you personally acquainted with C. S. Morehead?

Ans. Yes, sir; and all his family.

Ques. # 11. When did you last see him?

Ans. In the spring of 1861, when he went to Ft. Warren and when he came back.

Ques. # 12. Where did you see him?

Ans. At my father's house.

Ques. # 13. Did you ever correspond with him?

Ans. No, sir; I was nothing but a child.

Ques. # 14. How old were you when you last saw him?

Ans. I was only seventeen years old.

Ques. # 15. Did you ever see any writing of his except these bills of exchange?

Ans. Saw his signature on letters to father *lieing* around the house—around on father's desk.

Ques. # 16. When did you last see these letters?

119 Ans. In the summer of 1861.

Ques. # 17. These letters and these bills of exchange are all the writing of his you have seen, are they not?

Ans. Yes, sir.

Ques. # 18. For what purpose did you give th*ese* bills of exchang to Mr. Witt?

Ans. I gave them to him in hopes of getting something of the Briggs claim—my father's share of it.

Ques. # 19. Do you know what these bills of exchange were given for, what the consideration was?

Ans. Of course not. What does a child of fourteen years old know of bills of exchange.

Ques. 20. What was the talk about them when your father would read them over in the family?

Ans. Just talking about hopes of getting them; just like any one else when a Government claim was coming to them.

Ques. # 21. Who did your father say had to pay them?

Ans. I never heard about the bills of exchange; I only heard about the Briggs claim. I heard my father say he owned one-third in that.

Ques. # 22. How much were the bills of exchange for that he would talk about?

Ans. I know nothing about it. They were all in the Briggs claim. I know nothing about business myself. We talked about it among ourselves, in hopes of spending it.

STATE OF KENTUCKY, }
Henderson County, } *ss:*

120 I, Jno. K. Letcher, a notary public in and for the State and county aforesaid, do hereby certify that the foregoing depositions of B. G. Witt and Mrs. A. A. Conway were taken before

me at the time and place stated in the caption; that said witnesses were first duly sworn before giving them; that they were written by me in shorthand in their presence and afterwards transcribed by me; that the deposition of B. G. Witt was then read to him and signed by him in my presence, signature of Mrs. A. A. Conway being waived by consent of both parties. Attorneys S. B. Vance and M. Yeaman present during taking.

Given under my hand and seal this the 29th day of Dec., 1894. My commission expires January 17th, 1896.

[SEAL.] JNO. K. LETCHER,
N. P., H. Co.

The deposition of R. T. Durrett, taken on the 16 day of March, 1895, at the residence of R. T. Durrett, at Louisville, county of Jefferson and State of Kentucky, to be read as evidence on behalf of the — in an action between H. A. McLemore, plaintiff, and James A. Briggs, ex'or, &c., defendant, now pending in the Jeff. circuit court, — by attorney b-ing present.

R. T. DURRETT, being duly sworn and examined by Mr. Bruce, as attorney for Mr-. Amanda Walker, deposed as follows:

Q. You have been a resident of the city of Louisville for many years?

A. I have resided in Louisville since 1849 constantly.

Q. Were you acquainted with Charles M. Briggs, now deceased, during his lifetime?

A. I knew his after he came to Louisville, after the close of
121 the rebellion—the late war—and then I knew him intimately from 1871 to his death, which, I think, was in 1876.

Q. Was that the Charles M. Briggs who had some character of claim against the United States Government for cotton taken during the war?

A. Yes, sir; because he spoke to me some little of the claim.

Mr. GIBSON: This is no question about the identity of the man. That may be conceded.

Q. Are you acquainted with the signature of Charles M. Briggs from having seen him write?

A. I was once very familiar with his signature. I saw him write much in the law office of which he was a partner; he and I and Governor Bramlette were partners. I saw a great deal of his writing and a great deal of his correspondence, but that has been a long time ago.

Q. When was that?

A. From 1871 to 1876.

Q. I show you a paper dated April 18th, 1862, purporting to be signed by C. M. Briggs and purporting to be an agreement whereby he agreed to make certain disposition of the proceeds of cotton sold to him by C. S. Morehead, and which is the original paper filed in this action by Mrs. Amanda M. Walker as the basis of her claim in this action against the estate of Briggs, which is made an exhibit

with her answer and cross-petition, and I ask you to examine that paper and state whether or not the signature of C. M. Briggs thereto is the genuine signature of Charles M. Briggs to whom we have referred.

A. I think the signature is that of Mr. Briggs, though I
122 don't think all the writing is his writing.

Cross-examined by Mr. GIBSON:

Q. You were not familiar with his handwriting at the purported date of that?

A. No, sir. I knew him, though.

Q. Your opinion is based on your association with him from 1871?

A. Say from 1870 to 1875.

STATE OF KENTUCKY, }
Jefferson County. }

I, Clarence E. Walker, examiner, do certify that the foregoing deposition of R. T. Durrett — taken, pursuant to notice, before me at the time and place and in the action mentioned in the caption, the said witness having been first sworn by me that the evidence — should give in the action should be the truth, the whole truth, and nothing but the truth; that said deposition w- first taken by me in shorthand and a full and accurate transcript of same made by me; that the signature of the witness to said depositions and the reading of the same to him were waived by counsel for the respective parties, Mr. Bruce, — Amanda Walker, and Mr. Gibson, — Mr. Briggs.

Given under my hand this 18 day of March, 1895.

CLARENCE E. WALKER, *Examiner.*

At a court held on the 24th day of September, 1895—

Came James A. Briggs, executor, &c., and filed an assignment of errors herein, and also filed a schedule herein.

123 Said assignement of errors and schedule is as follows, to wit:

Jefferson Circuit Court, Chancery Division.

H. A. MCLEMORE, Guardian, Plaintiff, }
vs. } Assignment of Errors.
JAMES A. BRIGGS, Executor, Defendant. }

This case being regulated by the provisions of chapter three, title ten, of the Civil Code of Practice, the appellant, James A. Briggs, executor of the will of Charles M. Briggs, deceased, presents the following assignment of errors herein, upon which his appeal is based:

First. The court erred in sustaining the demurrer of Amanda M. Walker and the Ohio Valley Banking & Trust Co., administrator of A. L. Shotwell, deceased, to the amendment to the answer of said James A. Briggs, executor, to the cross-petition of said Amanda M.

Walker and Ohio Valley Banking and Trust Company, administrator of A. L. Shotwell, deceased.

Second. The court erred in refusing to allow James A. Briggs, executor, five per centum commissions on the whole amount collected by him from the United States.

Third. The court erred in adjudgeing that Charles S. Morehead was indebted to A. L. Shotwell in the sum of $6,681.21, or in any sum whatever.

Fourth. The court erred in adjudging that said Amanda M. Walker and Ohio Valley Banking & Trust Company, administrator of A. L. Shotwell, deceased, were respectively or either of them were entitled to recover of said James A. Briggs, executor, such
124 *por*portions respectively of the sum of $41,800 as their respective demands against the estate, to wit, $40,000 and $6,681.21, bear to the aggregate of the three sums of $25,000, $40,000, and $6,681.21.

Fifth. The court erred in adjudging that Amanda M. Walker recover of said James A. Briggs, executor, the sum of $23,325, or any part thereof, and her cost herein expended.

Sixth. The court erred in adjudging that the Ohio Valley Banking & Trust Company, as administrator of the estate of A. L. Shotwell, deceased, recover of James A. Briggs, executor, the sum of $3,896.00, or any part thereof, and its costs herein expended.

Seventh. The court erred in not dismissing the cross-petitions of the said Amanda M. Walker and the said Ohio Valley Banking & Trust Company, administrator of A. L. Shotwell's estate.

GIBSON & MARSHALL,
Att'ys for J. A. Briggs, Ex'or of Chas. M. Briggs.

Jefferson Circuit Court, Chancery Division.

H. A. McLEMORE, Guardian, Plaintiff,
vs.
JAMES A. BRIGGS, Executor, Defendant.

James A. Briggs, executor of the will of Charles M. Briggs, having filed his assignment of errors herein, and the court, having examined the record, now orders and directs that the following parts of the record in this case (being the only parts thereof which
125 are *materila* in view of said assignment of errors) should be copied by the clerk of this court, to be transmitted to the clerk of the court of appeals, constituting the record on the appeal of James A. Briggs, executor, taken from the judgment entered herein:

1. Amended and supplemental answer and cross-petition of James A. Briggs, executor, filed May 21, 1894, and order filing same.

2. Answer, counter-claim, and cross-petition of A. M. Walker, filed October 8, 1894, and order filing same.

3. Exhibit "A," filed with the answer of A. M. Walker.

4. Answer of James A. Briggs, executor, to the counter-claim and cross-petition of Amanda M. Walker, filed January 21, 1895, and order filing same.

5. Reply of Amanda M. Walker to the answer of James A. Briggs, executor, filed February 4, 1895, and order filing same.

6. Answer and cross-petition of A. L. Shotwell's administrator, filed October 19, 1894, and order filing same.

7. Exhibits filed with the answer and cross-petition of A. L. Shotwell's administrator, filed October 19, 1894, and order filing same.

8. Answer of James A. Briggs, executor, to the counter-claim of A. L. Shotwell's administrator, filed January 21, 1895, and order filing same.

9. Reply of A. M. Walker to the answer of A. L. Shotwell's administrator, filed November 26, 1894, and order filing same.

126 10. Motion by James A. Briggs, executor, entered March 25, 1895, to file amended answers to cross-petitions of Amanda M. Walker and Shotwell's administrator, and exhibits and objection thereto.

11. Order filing amended answers of James A. Briggs and exception.

12. Amended answer of James A. Briggs, executor, to the cross-petition of A. L. Shotwell's administrator, filed May 13, 1895, and order filing same.

13. Amended answer of James A. Briggs, executor, to the cross-petition of Amanda M. Walker, filed May 13, 1895, and order filing same.

14. Exhibit "A" referred to and filed with the amendment to the answer of James A. Briggs, executor, to the cross-petition of Amanda M. Walker and A. L. Shotwell's administrator, and order filing same.

15. Demurrer, filed May 14, 1895, by Amanda M. Walker and A. L. Shotwell's administrator to the amendment to the answer of James A. Briggs, executor, and order filing same.

16. Order sustaining demurrer of Amanda M. Walker and Ohio Valley Banking and Trust Company, administrator, to the amendment to the answer of James A. Briggs, executor.

17. Consent order, entered March 25, 1895.

18. Statement of James A. Briggs, executor, filed March 25, 1895.

19. Opinion, filed July 15, 1895.

127 20. Judgment, entered July 15, 1895.

21. Motion to amend judgment and order, entered August 5, 1895.

22. Order granting appeal, entered August 5, 1895.

23. Depositions of Amanda M. Walker and Charles M. Walker taken on behalf of Amanda M. Walker and filed herein February 23, 1895.

24. Depositions of B. G. Witt and A. A. Conway taken on behalf of A. L. Shotwell's administrator and filed January 24, 1895.

25. Deposition of R. T. Durrett taken for Amanda M. Walker and filed March 18, 1895.

26. Assignment of errors and schedule filed.
The above schedule is agreed to.

GIBSON & MARSHALL,
Attorneys for J. A. Briggs, Ex'or.
HELM & BRUCE,
Attorneys for Amanda M. Walker.
S. B. & R. D. VANCE AND
W. B. DIXON,
Attorneys for Shotwell's Adm'r.

Approved and made part of this record.

I. W. EDWARDS, *Judge.*

128 STATE OF KENTUCKY, }
Jefferson County. }

I, John S. Cain, clerk of the Jefferson circuit court, do hereby certify that the foregoing 116 pages contain a full, true, and complete transcript (as ordered by the schedule filed herein) in the case wherein Henry A. McLemore, g'd'n, &c., are plaintiffs and James A. Briggs, &c., are defendants, #3430S, as the same appears of record and on file in my said office.

Witness my hand this 3rd day of October, 1895.

JOHN S. CAIN,
Cl'k Jeff. Cir. Ct.

Upon the foregoing transcript the following statement was endorsed:

Court of Appeals of Kentucky.

JAMES A. BRIGGS, Executor of the Will of Charles M. Briggs, Dec'd, Appellant,
vs.
AMANDA M. WALKER and OHIO VALLEY Banking and Trust Company, Adm'r of the Estate of A. L. Shotwell, Dec'd, Appellee. } Transcript of Record.

On appeal from the chancery division, Jefferson circuit court.

129 The parties to this appeal are named above. The judgment sought to be reversed was rendered on the 15th day of July, 1895, and will be found on pages 91, 92, and 93 of this transcript. An appeal was granted below and no process is desired.

GIBSON & MARSHALL,
Att'ys for Appellant.

At a court of appeals held in and for the Commonwealth of Kentucky, at the capitol, in the city of Frankfort, on the 11th day of October, A. D. 1895, the following order was made, to wit:

Jefferson.

BRIGGS, Executor,
v.
WALKER, &c.

It is agreed that appellant and appellee- may withdraw the record herein for the purpose of having the same printed, and that the cost of printing the same may be taxed as cost- herein. Oct. 8th, 1895.

Afterwards, at a court of appeals held, as aforesaid, on the 11th of February, A. D. 1896, the following order was made herein, to wit:

Jefferson.

BRIGGS, Executor,
v.
WALKER, &c.

On motion of appellee-, by counsel, leave is given to file a brief by the 15th of February.

Afterwards, at a court of appeals held, as aforesaid, on the
130 25th day of February, 1896, the following order was entered herein, to wit:

Jefferson.

BRIGGS, Executor,
v.
WALKER.

On motion of the appellee-, by counsel, a cross-appeal is granted herein.

Afterwards, at a court of appeals held, as aforesaid, on the 26th day of February, A. D. 1896, the following order was entered herein, to wit:

Jefferson.

BRIGGS, Executor,
v.
WALKER, &c.

On motion of the appellees, a cross-appeal is granted herein, and the case is continued for oral argument.

Afterwards, on the 27th day of February, 1896, the following order was entered, to wit:

Jefferson.

BRIGGS, Executor,
vs.
WALKER, &c.

The appellees, by counsel, filed copies of the supersedeas bond and supersedeas herein, which is made part of the record. The copies filed by the foregoing order — as follows:

And on the 6th day of August, 1895, James A. Briggs, executor of Charles M. Briggs' will, executed and filed his supersedeas bond in the office of the clerk of the aforesaid court, which is in words and figures as follows, to wit:

COMMONWEALTH OF KENTUCKY, }
Jefferson County. }

Jefferson Circuit Court, Chancery Division.

JAMES A. BRIGGS, Executor of Charles M. Briggs' Will, Appellant,
against
131 AMANDA M. WALKER & OHIO VALLEY BANKING & TRUST CO., Adm'r of A. L. Shotwell, Dec'd, Appellee. } # 34308.

Appeal from a judgment of this court rendered the 15 day of July, 1895.

Whereas said appellant has taken an appeal from the judgment of this court rendered on the 15th day of July, 1895, against James A. Briggs, executor of Charles M. Briggs' will, in favor of the appellees, Amanda M. Walker and Ohio Valley Banking & Trust Co., adm'r of A. L. Shotwell, for the sums of $23,325.00, $3,896.00; which judgment is in words and figures as follows:

This action having been submitted in chief, upon the pleadings and the proof, on the cross-petitions of Amanda M. Walker and the Ohio Valley Banking and Trust Company, administrator of the estate of A. L. Shotwell, deceased, against James A. Briggs, executor of the will of Charles M. Briggs, deceased, and the court being sufficiently advised, it is considered and adjudged by the court:

First. That the instrument sued upon by Amanda M. Walker, a copy of which is filed with her answer and cross-petition as an exhibit therewith, was and it is the act and deed of Charles M. Briggs, deceased, and that it was assigned and delivered to said Amanda M. Walker by Samuel J. Walker, named therein.

Second. That Charles S. Morehead, mentioned in said instrument, was indebted at the execution thereof to said A. L. Shotwell, now deceased, in the sum of $6,681.21.

132 Third. That the said executor, James A. Briggs, is entitled, out of the funds admitted by him to have been collected by him as said executor from the United States Government, to receive and retain a commission equal to five per cent. upon $44,000, which is $2,200.

Fourth. That said Amanda M. Walker and said Ohio Valley Banking and Trust Company, administrator of the estate of A. L. Shotwell, deceased, are respectively entitled to recover of said James A. Briggs, executor aforesaid, such proportions respectively of the sum of $41,800 (being $44,000, less $2,200) as their respective demands against the estate, to wit, $40,000 and $6,681.21, bear to the aggregate of the three sums of $25,000, $40,000, and $6,681.21.

Fifth. It is therefore further considered and adjudged by the court that said Amanda M. Walker recover of the said James A. Briggs, executor of the will of Charles M. Briggs, deceased, the sum $23,325 and her costs herein expended, and that the Ohio Valley Banking and Trust Company, as administrator of the estate of A. L. Shotwell, deceased, recover of said James A. Briggs, executor of the will of Charles M. Briggs, deceased, the sum of $3,896 and its costs herein expended, of which judgments said Amanda M. Walker and said trust company may have executions, leviable, however, only upon the assets of the testator of said James A. Briggs, executor, now in his hands or which shall hereafter come to his hands.

Sixth. It is further considered and ordered by the court that said James A. Briggs, as aforesaid, out of the funds in his hands
133 as such executor, do pay into court in this action the aforesaid amounts, for which judgment is hereby given respectively in favor of said Amanda M. Walker and said trust company, administrator as aforesaid, and that when said amounts shall have been paid into court the said Amanda M. Walker and said trust company, administrator as aforesaid, have leave to withdraw the amounts to which they are respectively entitled from the fund in court, and the appellant desires to supersede said judgment.

Now, we, James A. Briggs, ex'or, &c., and J. E. Potter, W. J. Potter, and H. P. Potter, sureties, do hereby covenant to and with the appellees, Amanda M. Walker and Ohio Valley Banking & Trust Co., adm'r of A. L. Shotwell, that the appellant will pay to the appellees all costs and damages that shall be adjudged against the appellant on the appeal, and also that they will satisfy and perform the said judgment in case it shall be affirmed, and any judgment or order which the court of appeals of Kentucky may render or order to be rendered by the inferior court, not exceeding in amount or value the judgment aforesaid, and also pay all rents, hire, or damage which during the pendency of the appeal may accrue on any part of the property of which the appellee is kept out of possession by reason of the appeal.

Witness our hands this 6 day of August, 1895.

JAMES A. BRIGGS,
Ex'or of Chas. M. Briggs' Will,
By CHAS. H. GIBSON,
Att'y-in-fact.
J. E. POTTER,
By CHAS. H. GIBSON,
Att'y-in-fact.
W. J. POTTER,
By CHAS. H. GIBSON,
Att'y-in-fact.
H. P. POTTER,
By CHAS. H. GIBSON,
Att'y-in-fact. [SEAL.]

134 The following power of attorney is filed with the foregoing supersedeas bond:

Know all men by these presents that I, James A. Briggs, executor of the will of Charles M. Briggs, hereby nominate and appoint Charles H. Gibson and John Marshall, or either of them, my attorneys-in-fact, for me and in my name and behalf to execute a supersedeas bond to supersede any judgment heretofore or hereafter rendered in the Jefferson circuit court, chancery division, in favor of Amanda M. Walker or the Ohio Valley Banking and Trust Company, administrator of the estate of A. L. Shotwell, deceased, against me as such executor on the issues between us made in the case pending in said court, No. —, wherein H. A. McLemore, guardian, etc., is the plaintiff and I am one of the defendants.

Witness my hand this — day of July, 1895.

J. A. BRIGGS,
Ex. of Executor of *the Will of Charles M. Briggs.*

STATE OF KENTUCKY, }
Warren County. }

I, Ben. F. Gardner, clerk of the county court in and for said county, certify that on this day the foregoing instrument of writing was produced before me by James A. Briggs, executor of the will of Charles M. Briggs, a party thereto, and acknowledged by him to be his act and deed.

Witness my hand this 29 day of July, 1895.

BEN. F. GARDNER,
Clerk Warren County Court.

135 Know all men by these presents that we, J. E. Potter, H. P. Potter, and W. J. Potter, of Warren county, in the State of Kentucky, hereby nominate and appoint Charles H. Gibson and John Marshall, of Louisville, Kentucky, or either of them, our several attorneys-in-fact, for us and in our names to execute as sureties any supersedeas bond given by James A. Briggs, executor of the will of Charles M. Briggs, deceased, to supersede any judgment heretofore or hereafter rendered against him in favor of Amanda M. Walker or the Ohio Valley Banking and Trust Company, administrator of the estate of A. L. Shotwell, in the chancery division of the Jefferson circuit court, in the case pending in the said court, numbered — and styled H. A. McLemore, guardian, *versus* James A. Briggs, executor, and will at all times ratify and confirm all the acts and doings of our said attorney or either of them in the premises.

Witness our hands this 29th day of July, 1895.

J. E. POTTER.
W. J. POTTER.
H. P. POTTER.

STATE OF KENTUCKY, }
Warren County. }

I, Ben. F. Gardner, clerk of the county court for the county aforesaid, hereby certify that the above instrument of writing was this

day presented before me by J. E. Potter, H. P. Potter, and W. J. Potter, parties thereto, who severally acknowledged that they had executed the same.

And the said J. E. Potter, being by me duly sworn, deposed and said that he is a citizen and resident of Warren county, Ken-
136 tucky, and that he is worth the sum of $30,000.00 over and above the amount of his debts, and has property in said State subject to execution of the value of $30,000.00.

And the said H. P. Potter, being by me duly sworn, deposed and said that he is a citizen and resident of Warren county, Kentucky, and that he is worth $25,000.00 over and above the amount of his debts, and has property in said State subject to execution of the value of $25,000.00.

And the said W. J. Potter, being by me duly sworn, deposed and said that he is a citizen and resident of Warren county, Kentucky, and that he is worth $20,000.00 over and above the amount of his debts, and his property in said State subject to execution of the value of $20,000.00.

Witness my hand this 29th day of July, 1895.

BEN. F. GARDNER,
Clk Warren County Court.

And thereupon the clerk issued supersedeas and copy, which is in words and figures as follows, to wit:

STATE OF KENTUCKY, }
Jefferson County. }

Jefferson Circuit Court, Chancery Division.

AMANDA M. WALKER & OHIO VALLEY BANKING and Trust Co., Adm'r of A. L. Shotwell, Dec'd, Appellee-,
versus
JAMES A. BRIGGS, Executor of Chas. M. Briggs' Will, Appellant.
} Supersedeas.

I, John S. Cain, clerk of the Jefferson circuit court, chan-
137 cery division, in the county and State aforesaid, do hereby certify that an appeal has been granted from this court from a judgment obtained by Amanda M. Walker and Ohio Valley Banking & Trust Company, adm'r of A. L. Shotwell, dec'd, against James A. Briggs, executor of Charles M. Briggs' will, for $23,325.00 and $3,896, in the Jefferson circuit court, chancery division, on the 15 day of July, 1895, and that a supersedeas bond has been executed within thirty days after the appeal was granted. Therefore the appellee and all others are commanded to stay proceedings on the judgment aforesaid.

Witness John S. Cain, clerk of said court, this 6 day of Aug., 1895.

JOHN S. CAIN, *Clerk*,
By FRANK X. MEIXSEL, *D. C.*

The sheriff returned said supersedeas with the following endorsement thereon:

Came to hand Aug. 8, 1895, at 4.45 p. m.

Executed Sept. 17, '95, on the Ohio Banking and Trust Company, administrator of A. S. Shotwell, deceased, by delivering a copy of the within supersedeas to W. D. Dixon, he being attorney for the said company. Executed September 17, '95, on Amanda W. Walker by delivering a copy of the within supersedeas to Helm Bruce, he being attorney for Amanda W. Walker.

J. R. PFLANZ, *S. J. C.*,
By J. J. GREANY, *D. S.*

138 STATE OF KENTUCKY, }
Jefferson County. }

I, John S. Cain, clerk of the Jefferson circuit court, do hereby certify that the foregoing 7 pages contain a full, true, and complete transcript of the supersedeas bond executed and filed in the office of the clerk of the aforesaid court on the 6th day of August, 1895, and the powers of attorney filed with said bond and the supersedeas issued by the clerk in the case wherein H. A. McLemore, g'd'n, is plaintiff and James A. Briggs, executor, &c., *are* defendants #34308, as the same appears of record and on file in my said office.

Witness my hand this 24th day of February, 1896.

JOHN S. CAIN,
Cl'k Jeff. Cir. Ct.

Afterwards, at a court of appeals held, as aforesaid, on the 10th day of June, 1896, the following order was entered, to wit:

Jefferson.

BRIGGS, Ex'or, }
v.
WALKER, &c. }

This cause came on and was heard.

Afterwards, at a court of appeals held, as aforesaid, on the 27th day of January, A. D. 1897, the following order was entered, to wit:

Jefferson.

BRIGGS, Ex'or, }
v.
WALKER, &c. }

By agreement filed, the order of submission herein is set
139 aside and the cause is continued for oral argument.

Afterwards, at a court of appeals held, as aforesaid, on the 18th day of March, A. D. 1897, the following order was entered herein, to wit:

By consent of all the parties hereto, it is ordered that the order heretofore entered herein, on the 27th day of January, 1897, setting aside the submission of this cause and passing the same for oral argument, is hereby set aside, and the said cause shall stand submitted.

Afterwards, at a court of appeals held, as aforesaid, on the 4th day of December, A. D. 1897, the following judgment and orders were entered, to wit:

CHARLES M. BRIGGS' EX'OR, Appellant, *vs.* AMANDA M. WALKER, &c., Appellees. } Appeal from the Chancery Division of the Jefferson Circuit Court.

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed both upon the original and cross appeals, and that appellees recover of appellant ten per cent. damages upon the amount of the judgment superseded herein on the original appeal which is ordered to be certified to said court.

It is further considered that appellees recover of the appellant their cost expended herein on the original appeal, and that the appellant recover of the appellees his cost expended on the cross-appeal.

140 At the same time the court, through Judge Hazelrigg, delivered the following opinion:

The appellant, James A. Briggs, as executor of C. M. Briggs, filed his amended and supplemental answer and cross-petition in the suit of McLemore, guardian, *vs.* Briggs, executor, pending for the settlement of his intestate's estate in the Jefferson circuit court, chancery division, in which he aver-ed that since the last settlement of his accounts he had succeeded in collecting from the United States Government the "cotton claim" referred to in previous settlements, and that Amanda M. Walker and the Ohio Valley Banking & Trust Company, as administrator of the estate of A. L. Shotwell, deceased, were asserting some sort of claim against the money so collected by him, and he asked that in order to a final settlement of his accounts these parties be required to set up whatever claims they had. Accordingly, the parties named, being the present appellees, did appear and assert their claims; and after a trial of the issues involved, judgment was rendered distributing the sum collected, namely, $44,000.00, among *three* parties *parties*, viz., James A. Briggs, as executor of C. M. Briggs; Amanda M. Walker, as assignee of her husband, and the banking and trust company, as administrator of Shotwell, the shares of each being fixed according to the terms of a writing to be noticed presently.

That Walker and the company should have been allowed any part of this cotton claim is the subject-matter of Briggs' complaint on this appeal.

It appears that on April 18th, 1862, C. S. Morehead executed and delivered to his nephew, C. M. Briggs, the following writing:

141

"For and in consideration of money loaned and advanced heretofore by C. M. Briggs and further valuable consideration by way of suretyship for me by said Briggs, I hereby sell and transfer to said C. M. Briggs all the cotton on my two plantations in Mississippi near Eggspoint and Greenville. Said cotton embraces all I have, baled and unbaled, gathered and ungathered. This is intended to cover all cotton that I have now or may have this year on said two plantations, supposed to be about 2,000 bales.

April 18, 1862.

C. S. MOREHEAD."

At the same time C. M. Briggs executed and delivered to Samuel J. Walker, who was the son-in-law of Governor Morehead, the following writing:

"In consideration of the sale and transfer this day made to me by C. S. Morehead of all the cotton on his two plantations near Eggspoint in the State of Mississippi, as specified in said sale and transfer in writing, I hereby assume and agree to pay to Samuel J. Walker the sum of forty thousand dollars, due and owing to said Walker by said C. S. Morehead, upon condition however, that I realize sufficient amount from any cotton on or from said plantations or proceeds of same, together with about twenty-five thousand dollars due me from said C. S. Morehead for moneys advanced and liability for him as surety; also about ten thousand dollars, more or less, being a claim of A. S. Shotwell as he may hereafter establish against said C. S. Morehead; but in case I should not realize sufficient to pay all of said claims or

142

amounts above named in full, then I am to pay or divide the amount that may be realized from said cotton proportionately or *pro rate* according to the respective amounts named to the parties above named; first, however, paying and refunding any monies paid by the respective parties for or account of expenses pertaining to same, and in case more should be realized than sufficient to pay said amounts, with interest thereon to the time of realization and payment, then any surplus to be divided, one-half to said Shotwell and (C. M. Briggs) jointly for any services, and the remaining one-half to said Samuel J. Walker, but no other consideration to be paid to said Shotwell and Briggs for their service.

C. M. BRIGGS.

April 18, 1862."

Briggs at once took steps to get possession of the cotton, but by reason of the objections of the Federal and Confederate forces in its vicinity was unsuccessful. The cotton was finally seized by the Federal authorities, who sold it, and the money was paid into the Treasury of the United States.

C. M. Briggs died in 1875 after unsuccessful and repeated efforts to obtain the money for which his cotton sold. Thereafter his ex-

ecutor undertook the task, and finally, in June, 1888, through his attorneys, obtained the passage of the following act of Congress:

"Be it enacted, etc., That the Court of Claims is hereby given, subject to the proviso hereinafter mentioned, like jurisdiction to
143 hear and determine the claim of the legal representatives of C. M. Briggs, deceased, for the proceeds of four hundred and fifty-five bales of cotton, now in the Treasury of the United States, alleged to have been owned, in whole or part, by said Briggs, as is given to said court by the acts of March twelfth, eighteen hundred and sixty-three, and July second, eighteen hundred and sixty-four, upon petition to be filed in said court at any time within two years from the passage of this act, any statute of limitations to the contrary notwithstanding:

"*Provided, however*, that unless the said court shall, on a preliminary inquiry, find that said Briggs was in fact loyal to the United States Government, and that the assignment to him hereinafter mentioned was *bona fide*, the court shall not have jurisdiction of the case, and the same shall, without further proceedings, be dismissed;

"*And provided further*, that if the court shall find that the alleged assignment from one Morehead to said Briggs, of date April eighteenth, eighteen hundred and sixty-two, under which said Briggs claimed said cotton, was intended only as security to said Briggs for indebtedness, and against contingent liabilities assumed by him for said Morehead, judgment shall be rendered for such portions of the proceeds of said cotton as will satisfy the debts and claims of said Briggs, to secure which said assignment was given;

"*Provided*, said judgment shall not be paid out of the general fund in the Treasury arising from the sale of captured and abandoned property, but shall be paid out of the special fund
144 charged to and accounted for by Captain G. L. Fort, assistant quartermaster at Memphis, arising from the sale of the two thousand two hundred and nine bales of cotton received by him, with which claimant's cotton was intermingled, said claimant to receive only the proportion which his cotton bears to the net proceeds accounted for by said Fort." (June 4, 1888, ch. 348, Stat. L., 1075.)

Under the provisions of this act executor filed his petition in the Court of Claims, when, after an investigation, he was allowed the sum of eighty-eight thousand dollars ($88,000); to one-half of which, however, the attorneys for the claim were entitled in pursuance of their contract with C. M. Briggs. Thus there came to his hands in March, 1894, the sum of $44,000 as the proceeds of the cotton sold to him in the contract of April 18th, 1862, and to the distribution of which in the particular manner therein pointed out he stood pledged in his contract of the same date.

The appellees base their claim to a *pro rata* share of this $44,000 on the writing signed by Briggs.

No question is raised as to Amanda J. Walker's ownership of the claim in favor of Samuel J. Walker, whose widow she is, and there is no serious dispute as to the amount of the Shotwell debt.

At the inception of the litigation over these claims the executor contented himself with a general denial from want of knowledge or information of the averments of the pleadings of the appellees, but after some preparation of the case he filed an amended plead-
145 ing and rested his defense on certain facts connected with the prosecution of the claim in the Court of Claims, which he contended estopped the appellees from asserting their demands and established that C. M. Briggs alone or his estate was entitled to the entire sum collected. This pleading was filed over the objections of appellees, but upon final hearing their demurrers thereto were sustained, and the sufficiency of this pleading is the question to be determined.

The averments, briefly stated, are that the passage of the act in virtue of which recovery was made possible was a pure matter of grace on the part of the Government for the sole benefit of C. M. Briggs' estate; that the claim had long before been barred by limitation and was, in fact, worthless except for this act of grace; that in the action in the Court of Claims it was finally determined that C. M. Briggs was loyal to the United States, and for this reason amount of recovery was limited to such sum as would satisfy the debts and claims alone of C. M. Briggs against Morehead, and no recovery was or could have been allowed for anything owing Walker or Shotwell by Morehead.

And, moreover, that the most important and material evidence he could procure in the prosecution of the claim in that court was furnished by Walker and Shotwell, who testified that the sale of the cotton by Morehead to Briggs was absolute and in good faith on account of Morehead's indebtedness to Briggs existing prior to the sale and for nothing else; that the interest of Walker and Shotwell in the claim, if they intended to assert any, was fraudu-
146 lently suppressed and concealed by them, and this was a fraud on the Government. He files a part of his pleading, copies of certain depositions of Shotwell taken before the Court of Claims, and likewise a copy of Walker's affidavit. He also called in question the existence of the paper of April 18, 1862, purporting to have been signed by Briggs, and denied its genuineness. This, however, he afterward retracts, and no attention need be paid to this feature of his defense.

The affidavit of Walker in the Court of Claims is to the effect that he was the son-in-law of ex-Governor Morehead and was intimate with him since 1857 until his death, in 1868; he was his counselor, advisor, and friend; that he frequently heard Morehead talk of his indebtedness to C. M. Briggs prior to 1862, and in all his conversations on this subject he said he was indebted to Briggs largely for monies advanced and liabilities as surety for him, and that in April, 1862, a bill of sale was written by the affiant of all of Morehead's cotton on his two plantations in Washington county, Mississippi, which was done as evidence of a *bona fide* sale and transfer to said Briggs of the same and for the purposes specified in said writing; that the said transfer of the cotton as specified in the writing was absolute and *bona fide* on account of

liabilities and indebtedness existing prior to the date of said
of sale.
notwell's statements were to the same effect, but he testified fur-
ther that he did have an interest of one-third in the claim
under a contract with Briggs, and that the sale was for the
purposes in the writing and for nothing else.
hese statements were all true except, perhaps, the last one of
twell, and as it is not shown certainly that Shotwell knew of the
ing which had been delivered to Walker, he may not have told
ntruth intentionally. But in any event it was wholly imma-
l and did not deceive or defraud the Government.
is averred in the appellant's pleadings that no allowance was
le to Briggs and "he only received and recovered from the
ted States such sum as was owing directly to his testator by said
'ehead."
lere it is confessed that nothing was recovered from the United
es except what was jointly owing from Morehead to Briggs,
this amount the Government was willing to pay because of the
wn loyalty of the claimant Briggs. But surely the Government
not seek to impress on the sum it was willing to pay Briggs on
bt jointly due him an exemption from Briggs' obligations.
Valker and Shotwell had no claim on the Government and pre-
ed none. They helped Briggs get only what was due him, and,
could the Government be interested in preventing Briggs' dis-
rge of his honest obligations after he got his money? There is
ing to show that either Shotwell or Walker were disloyal, and
if they were, the policy of the Government has never been so
xtended as to refuse to pay its loyal subjects only on condition
they do not pay out the money to those who may have been
disloyal. But while appellant's pleading avers as a fact
that suppression and concealment of the facts were resorted
to by these affiants in the Court of Claims, the deposition of
well, made part of the pleading, discloses that he testified in
court that because of Morehead's indebtedness to him on bank
r and securities he was to have one-third of this claim, and that
. Briggs had told him "that the bill of sale for the cotton was
n to said Briggs by Morehead for the purpose of paying Briggs,
Walker, and himself, for such sums or notes by virtue of en-
ements." So it would seem that no concealment of facts was
e, and the Court of Claims did not refuse to allow Briggs the
unt of his debt on Morehead out of the proceeds of the cotton
by the Government, by reason of the fact that the sale by More-
was for the purpose of securing other parties than Briggs,
gh it may have confined its allowance to what Morehead owed
gs alone.
e obligation of Briggs, however, was to prorate whatever sum
ight get out of the cotton, and with this obligation the Gov-
ent, as we have seen, was not concerned. We attach no im-
nce to the suggestion that the Government saw fit to waive the
of limitation. Individuals do this sometimes, and there was
g reason why the Government should do so in this case, for it

is manifest there was no delay on the part of the claimant in presenting and urging his claim. The allowance to Briggs was certainly not a gratuity. The claim was to be established by proof and determined in a court, and was to be paid not out of the gen-
149 eral funds in the treasury arising from the sale of captured and abandoned property, but out of the sales of cotton by Captain Fort with which the claimant's cotton became intermingled, and then only in the proportion which his cotton bore to the net proceeds of the Fort sales.

The judgment below allows the executor $2,200 as his commission on the amount collected and adjudges the appellees entitled to recover such proportion respectively of the sum of $41,800.00 as their respective demands against the estate, namely, $40,000 and $6,681 (amount fixed for Shotwell debt), bear to the aggregate of the three sums of $25,000, $40,000, and $6,681.00.

It is urged for appellant that he is entitled to counsel fees, to be deducted before distribution of this fund, and so he would if there was not sufficient estate left in his hands out of which to pay them; but appellees cannot be compelled to pay for services rendered against them when sufficient estate is left in the executors' hands for that purpose.

On the cross-appeal it is suggested that the executors should account for interest on the fund collected in March, 1894, until the rendition of the judgment in July, 1895. We think not, because it does not appear that he used the fund or made it profitable, or that he could have done so safely in view of the litigation.

The judgment on the original and cross appeal is affirmed.

Afterwards, at a court of appeals held, as aforesaid, on the
150 11th day of January, A. D. 1898, the following order was entered herein, to wit:

Jefferson.

BRIGGS, Executor, }
v.
WALKER, &c. }

On motion of the appellant, by counsel, the time for filing a petition for rehearing is extended 15 days. The motion having been filed in the clerk's office of this court on Saturday, January 8th, 1898, the order is made as of that date. Appellees objected to the motion and to the order extending the time.

Afterwards, at a court of appeals held, as aforesaid, on the 20th day of January, A. D. 1898, the following order was made herein:

Jefferson.

BRIGGS, Ex'or,
v.
WALKER, &c.

Came the appellant, by counsel, and filed a petition and moved the court to grant a rehearing herein, and the cause is submitted on said motion.

The following is the petition filed by the foregoing order:

Court of Appeals of Kentucky.

JAMES A. BRIGGS, Executor, Appellant,
vs.
AMANDA M. WALKER, &c., Appellee.

Petition for Rehearing.

It is with reluctance that I ask the court to reconsider this
151 case. I would not do so if I did not feel that the court has misunderstood the facts as they are conceded to exist and has based its decision largely, if not entirely, on an assumption of fact that does not exist.

I confess to some surprise that the court, after expressing a belief that the evidence given by Walker and Shotwell to aid Briggs' executor in collecting his claim from the Government was true, with an immaterial exception, holds that their evidence did not deceive or defraud the Government.

If there are any facts in this case about which there can be no dispute they are:

First. That Walker testified that Briggs alone was interested in the claim, and that the assignment to him from Morehead was given for the sole purpose of securing the indebtedness due from Morehead to him.

Second. That Shotwell testified to the same effect.

Third. That the *bona fides* of the assignment from Morehead to Briggs was shown by the testimony of these two witnesses.

Fourth. That during the whole time the claim was pending both Walker and Shotwell concealed from the Government and from Briggs' executor the existence of the contract with Briggs under which they were to share in any sum realized on the cotton.

When these admitted facts are considered in connection with the provisions of the act of Congress which excluded any recovery for "contingent liabilities assumed by Briggs for Morehead" and
152 limited the recovery to such sum as would "satisfy the debts and claims of said Briggs," it is difficult to see how this court can hold that the double-dealing practiced by Walker and Shotwell, in disclaiming any interest in the claim, was "wholly immaterial and did not deceive or defraud the Government."

It cannot be denied that the evidence given by Walker and Shotwell was, to say the least, uncandid, not to use a harsher term. They disavowed any interest in the matter, and yet almost the mo-

ment the claim was collected they produced their concealed contract and demanded a division of the money. The admitted facts show that there could not have been a suspicion on the part of the Court of Claims that Briggs' executor was suing for and recovering money which would be impressed with a trust in favor of Walker and Shotwell, who had been testifying that Briggs alone was interested. The act of Congress itself forbade such a recovery, and if Briggs' executor sued and recovered as a trustee for Walker and Briggs, when they were swearing that they had no interest in the matter, then it is clear that the Government was defrauded. The executor was innocent of all fraud, because it is admitted that he knew nothing of the existence of the contract between the testator and Walker and Shotwell until the claim was collected.

I especially call the attention of the court to the second proviso of the act of Congress "for the relief of the estate of Charles M. Briggs," which says that if the assignment from Morehead to Briggs

"was intended only as security to said Briggs for indebted-
153 ness, *and against contingent liabilities assumed by him for said Morehead*, judgment shall be rendered for such portion of the proceeds of said cotton as will satisfy *the debts and claims of said Briggs to secure which said assignment was given.*" It will be observed that the "contingent liabilities" which Briggs assumed for Walker and Shotwell are expressly shut out by the act, and only "the debts and claims of Briggs, to secure which said assignment was given," were to be provided for.

If Congress had had before it the contract sued on, and had known that under the assignment from Morehead to Briggs the latter was to pay Walker and Shotwell a certain percentage of the proceeds of the cotton, it could not have more effectually shut out any recovery in the interest of Walker and Shotwell than it did by limiting the recovery to the "debts and claims of Briggs" alone.

With this plain manifest purpose on the part of Congress to so restrict the recovery, can it be said that Walker and Shotwell did not deceive the Government in testifying that they had no interest in the claim when in fact they contemplated and intended to assert a claim to a share of whatever was collected?

The court, however, seems to rest its decision mainly on the proposition that while the Government required proof of Briggs' loyalty before he could recover anything it did not and never had made it a condition that a loyal citizen should not use the money in paying his obligations to citizens who had been disloyal. The

correctness of this position has never been and is not now
154 questioned, but it is respectfully urged that it has nothing to do with this case. The only theory on which Walker and Shotwell can recover in this case is that Briggs' executor is their trustee, and that he in that capacity recovered the money which they demand. The agreement on which Walker and Shotwell rely did make Briggs a trustee for them in the event he had gotten the cotton or the proceeds of it in the usual way. There was no personal obligations on Briggs to pay Walker or Shotwell a cent in any other event. The cotton was assigned to him *as a trust*, to pay him-

self, Walker, and Shotwell certain sums if he could recover the cotton or its proceeds, and if not enough was received to pay all of them, then they were to prorate the amount received.

Briggs failed to get either the cotton or the proceeds, and was consequently under no obligations to pay a cent to either Walker or Shotwell. There was neither a moral or legal obligation on Briggs to pay them anything. When the act of Congress was passed, neither Briggs, Walker, or Shotwell had any claim against the Government. Limitation had barred all claims, and it was then a matter of grace, pure and simple, whether Congress would allow either of them to assert a claim. What did Congress do? It said, as plain as words could say it, in an act entitled "An act for the relief of the estate of Charles M. Briggs," that on proof of Briggs' loyalty his executor might assert a claim against the proceeds of the cotton for the amount of *the claims and debts of Briggs against Morehead and no more.*

155 Had Congress meant that Briggs' executor, as trustee, might assert claim for and recover money to be paid to other people, why did it not require proof of *their* loyalty? Why require proof that Briggs was loyal and not require it of the *cestui que trust?* Why call it "An act for the relief of the estate of Charles M. Briggs" if in fact it was an act for the benefit of Walker and Shotwell?

If the act contemplated the recovery of anything to cover "contingent liabilities," such as Briggs had assumed to Walker and Shotwell, why did it in express terms exclude those contingent liabilities and limit the recovery to the debts and claims of Briggs against Morehead?

It is conceded that when the act was passed all claims in behalf of every one to the proceeds of cotton had passed away and were barred by limitation.

Congress had passed laws fixing the time within which claims of this kind must be presented, and the time had gone by. Whatever moral obligations there may have been on the Government to pay claims of this character, there was no legal obligation, and the claimants were absolutely without any remedy.

Neither Briggs nor his executor were under the slightest obligation, moral or legal, to Walker or Shotwell. No claim had ever been presented against Briggs or his estate, and none could have been maintained.

Under these circumstances Briggs' executor went to Congress and asked that on proof of his testator's loyalty he be permitted to recover of the proceeds of the cotton such sum as would pay
156 Morehead's debts to his testator, and Congress consented that he might do so. It never consented to, but expressly forbid, the allowance or recovery of a penny in favor of any one else.

Now, no one denies the right of Congress to place these limitations on the recovery to be made by Briggs' executor. Not being bound to allow any claim to be asserted, it was certainly competent to fix the limits of the recovery. In other words, as all claims

were barred and lost, Congress had a right to say to Briggs' executor, as it did: We will let you recover what is due *you*, and nothing more.

I insist that it was a mere gratuity, under the circumstances. To give something which one is not bound to give, and to give it, therefore, as a matter of grace, is to give a gratuity. It is a simple task to illustrate the situation in a familiar way.

Imagine an assignment of a claim to A against B, which, when collected, is to be equally divided between A and C. Suppose that A, after most diligent efforts, is unable to collect the claim because of B's insolvency, and it finally becomes barred by limitation. Will any one contend that B may not afterwards, when he again becomes solvent, say to A that he will waive limitation so far as A is concerned and pay what is owing him without becoming liable to C and without A being required to divide with C?

Would not the payment to A, under the circumstances, be a mere gratuity on the part of B?

The whole situation, summed up briefly, was just this: Morehead, having certain cotton on his plantation, transferred
157 it to Briggs in trust to use it in paying debts owing to Briggs, Walker, and Shotwell. Briggs being unable to get the cotton, it was seized and sold by the Government and the proceeds payed into the Treasury. After unavailing efforts by Briggs in his lifetime and his executor after his death, the claim asserted by them was rejected and became barred by limitation. Congress then said to Briggs' executor, if you will prove your testator's loyalty and it appears that the assignment was made to secure your testator for debts due him and against contingent liabilities assumed by him, we will, for the relief of your testator's estate, permit you to recover such sum as will satisfy *the debts and claims* of your testator.

Under this permission Briggs' executor sued and recovered what was due his testator and nothing more. He was enabled to do this on the evidence of Walker and Shotwell, both of whom disavowed any interest in the claim, while they secretly intended to demand a share of whatever was recovered.

In other words, there was a certain fund in the Treasury realized from the sale of Morehead's cotton, and Congress simply consented that one of Morehead's creditors might, under certain conditions, prove his claim and have it allowed out of that fund.

The debts of Briggs, Walker, and Shotwell stood on a common footing. It was Morehead's desire that they should be paid *pro rata*
out of certain property or its proceeds, but the parties were
158 all thwarted in their desires and the property or its proceeds passed into the hands of the Government, where neither of them could get a penny without the consent of Congress, and it, having absolute dominion over the matter, had the right to say that it would grant relief to the estate of Briggs by permitting him to recover so much of the proceeds as Morehead owed him. I concede that if Walker and Shotwell had been *creditors of* Briggs, they could have asserted their claims against this or any other money in the hands of his executor, and no question of loyalty could have been

raised. But that is not the case here. Walker and Shotwell claim that Briggs' executor, *as their trustee, recovered this money for them*, and that is the question here. Instead of asserting any claim as creditors of Briggs, they assert a claim against his executor as their trustee, contending that he, the executor, as their trustee, collected this money *for them*, though it is admitted that he was all the time kept in blissful ignorance of the fact that they had any claim at all.

The executor in answer to this demand says he never knew of any claim of Walker and Shotwell, and shows, it is admitted, that by permission of Congress *her* merely proved and collected what was due his testator and no more. The executor was under no duty or obligation to collect a cent for Walker or Shotwell and never suspected he was doing so. On the contrary, their sworn statements induced him to believe they had no interest whatever in the matter. The court seems to have affirmed the case on the theory that Walker and Shotwell are here claiming as creditors of Briggs, in-
159 stead of seeking to hold his executor responsible as a trustee for them. The claims of Walker and Shotwell cannot be sustained on the theory that they are creditors of Briggs, but only on the theory that Briggs' executor sued and recovered for them as their trustee, and to this it is a sufficient answer to say that the executor had neither right nor power to execute any trusts that devolved on his testator.

The moral features of this case seem not to have impressed the court at all, and I do not care to urge them again at length, contenting myself with saying that I still think the conduct of Walker and Shotwell is aiding Briggs' executor to collect the claim, disavowing any interest in it, when they intended all the time to claim that Briggs' executor was their trustee, suing for them and for their benefit, and their conduct in concealing their contract and their intentions from both Government and the executor involved such moral turpitude as to estop them from asserting any claim.

It strike- me very much like a case where an innocent party, honestly believing that he and he alone is entitled to recover a certain fund, sues for it and maintains his right to it on the testimony of two witnesses, who prove his exclusive right to it and who strengthen their own credibility by denying any interest in it; then when the money is collected they come into court on a concealed contract, confessing that their testimony was false, and insist on a division of the money. Such conduct, even when dealing with a trustee, ought to debar them from asserting any claim.

160 *Executor's Commissions.*

The commission- granted the executor were allowed on the theory that he only collected $44,000.00 because he paid out half the fund as attorney's fees. It is suggested that commissions are not allowed on the net amount remaining in the hands of a personal representative, but on the total amount received and disbursed.

The executor collected $88,000.00 after many long years when nine men out of ten would have given up the fight, and if ever an

executor was entitled to full commissions in any case, this is certainly the case. Long after the claim was barred by limitation and after every one else had given it up the executor kept pegging away at it until success finally crowned his efforts. It is but a poor recognition of such services to cut his compensation in two, and I earnestly ask the court *the* reconsider his claim.

A rehearing is respectfully asked.

GIBSON AND MARSHALL,
Attorneys for Appellant.

Afterwards, at a court of appeals held, as aforesaid, on the 18th day of February, A. D. 1898, the following order was entered herein, to wit:

Jefferson.

BRIGGS, Ex'or,
v.
WALKER, &c.

The court being sufficiently advised, it is considered that the petition for rehearing herein be overruled.

Afterwards, on the 26th day of January, A. D. 1898, the
161 appellant, by counsel, filed in the clerk's office of the court of appeals the petition for writ of error and assignment of errors in words and figures following, to wit:

COMMONWEALTH OF KENTUCKY:

Court of Appeals.

On Application for Writ of Error with Supersedeas to the Supreme Court of the United States.

JAMES A. BRIGGS, Executor of the Will of Charles M. Briggs, Deceased, Plaintiff in Error,
v.
AMANDA M. WALKER and OHIO VALLEY Banking & Trust Company, Administrator of the Estate of A. L. Shotwell, Deceased, Defendants in Error.

Petition for Writ of Error and Assignment of Errors.

The plaintiff in error, James A. Briggs, executor of the will of Charles M. Briggs, complains of the judgement of the court of appeals in the above styled cause, wherein he was appellant and the defendants in error were appellees, which judgement was entered on the 4th day of December, 1897, but was suspended by the filing of a petition for rehearing and did not become final until the 18th day of February, 1898, when said petition was overruled, and respectfully prays a writ of error with supersedeas from the said judgement to the Supreme Court of the United States, and repre-
162 sents that said court of appeals erred to the prejudice of the

plaintiff in error, and he files the following assignment of errors, to wit:

1. The said court of appeals of Kentucky erred to the prejudice of the plaintiff in error in adjudging and directing that the judgement rendered by the Jefferson circuit court, chancery division, of Jefferson county, in the State of Kentucky, appealed from in the cause aforesaid, should be affirmed, and in adjudging against the plaintiff in error damages on said judgment and the costs of said cause in said court expended.

2. The said court of appeals of Kentucky further erred to the prejudice of the plaintiff in error in not giving due and proper effect to an act of Congress of the United States approved June 4th, 1888, entitled "An act for the relief of the estate of C. M. Briggs, deceased," which said act was by plaintiff in error specifically set up and relied on as a defense in said cause against the claims asserted against him by the defendants in error.

3. The said court of appeals of Kentucky further erred to the prejudice of the plaintiff in error in construing the said act aforesaid by holding in effect that the plaintiff in er-or in his recovery made and realized under said act was, as to a portion thereof, the trustee of the defendants in error, and bound to account to them therefor.

163 4. Said court of appeals of Kentucky further erred to the prejudice of the plaintiff in error in refusing to hold and decide, as claimed by plaintiff in error, that the act aforesaid was an act of grace on the part of the Congress of the United States to enable the plaintiff in error to recover from the United States what he alone was entitled to recover without any obligation to pay the defendants in error any part thereof.

5. Said court of appeals of Kentucky further erred in holding and deciding that Samuel J. Walker and A. L. Shotwell were not guilty of such fraud and deception as estopped their assignee and personal representative from asserting against the plaintiff in error the claims which were asserted and adjudged in the said cause.

Wherefore the plaintiff in error, James A. Briggs, executor of the will of Charles M. Briggs, prays that he be allowed a writ of error with supersedeas to the Supreme Court of the United States, to the end that the said judgement of the court of appeals of Kentucky may be inquired into, reviewed, and corrected, with such directions from the Supreme Court of the United States to the said court of appeals of Kentucky as to it may seem proper, and finally that the said judgement of the court of appeals of Kentucky, rendered on the 4*ht* day of December, 1897, and which became final on the 18th day of February, 1898, may be revised, with directions to

164 reverse the judgement of the Jefferson circuit court, chancery division, therein mentioned.

GIBSON AND MARSHALL,
D. W. SANDERS,
WM. STONE ABERT,
Attorneys for Plaintiff in Error.

Afterwards, on the same day, to wit, February 26th, 1898, the plaintiff in error filed in the office of said clerk the following writ of error (a copy of which is on file in said clerk's office):

165 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of appeals of the State of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between James A. Briggs, executor of Charles M. Briggs, deceased, appellant, and Amanda M. Walker and Ohio Valley Banking and Trust Company, administrator of the estate of A. L. Shotwell, deceased, appellees, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of
166 or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, James A. Briggs, executor of Charles M. Briggs, deceased, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of February, in the year of our Lord one thousand eight hundred and ninety-eight.

Seal U. S. Circuit Court, Ky. Dis., U. S. of America.

THOS. SPEED,
Clerk of the Circuit Court of the United States for Ky. District,
By HENRY F. CASSIN,
Deputy Clerk.

Allowed by—
J. H. HAZELRIGG,
Acting Chief Justice, Court of Appeals of Kentucky.

[Endorsed:] (5.) Writ of error. 1898, Febr'y 26. Filed in office. Att.: A. Adams, C. C. A.

167 At the same time the plaintiff in error filed in the office of the said clerk its bonds, approved by the judge, allowing the writ of error; which bonds are as follows:

Know all men by these presnets that we, James A. Briggs, executor of the will of Charles M. Briggs, as principal, and J. E. Potter and H. P. Potter and W. J. Potter, as sureties, are held and firmly bound unto Amanda M. Walker and to the Ohio Valley Banking and Trust Company, administrator of the estate of A. L. Shotwell, deceased, in the full and just sum of forty thousand dollars to be paid to the said Amanda M. Walker and said Ohio Valley Banking and Trust Comapny, administrator of the estate of A. L. Shotwell, deceased, certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of Februrary, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a term of the court of appeals of the State of Kentucky, in a suit depending in said court between James A. Briggs, executor of the will of Charles M. Briggs, deceased, as appellant, and the said Amanda M. Walker and the said Ohio Valley Banking and Trust Company, as adm'r of the estate of A. L. Shotwell, deceased, a judgement was rendered against the said James A. Briggs, executor of the will of Charles M. Briggs, deceased, affirming, with damages, the appeal prosecuted by him herein, and

168 the said James A. Briggs, executor of the will of Charles M. Briggs, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgement in the aforesaid suit, and a citation directed to the said Amanda M. Walker and Ohio Valley Banking and Trust Company, administrator of the estate of A. L. Shotwell, deceased, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said James A. Briggs, executor of the will of Charles M. Briggs, shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

J. A. BRIGGS,
Executor of the Will of Chas. M. Briggs. [SEAL.]
J. E. POTTER. [SEAL.]
H. P. POTTER. [SEAL.]
W. J. POTTER.

Sealed and delivered in presence of—
GEO. WILLIS.
R. W. McSWINE.
R. E. HARRIS.

Approved by—
J. H. HAZELRIGG,
Acting Chief Justice of the Court of Appeals of the State of Kentucky.

COMMONWEALTH OF KENTUCKY:

Supersedeas Bond on a Writ of Error in the Court of Appeals of Kentucky to the Supreme Court of the United States.

Court of Appeals of Kentucky.

169 JAMES A. BRIGGS, Executor of the Will of Charles M. Briggs, Deceased, Plaintiff in Error,

vs.

AMANDA M. WALKER and OHIO VALLEY BANKING AND TRUST Company, Administrator of the Estate of A. L. Shotwell, Deceased, Defendants in Error.

Know all men by these presents that we, James A. Briggs, executor of the will of Charles M. Briggs, deceased, and J. E. Potter, W. J. Potter, and H. P. Potter, as his sureties, of Warren county, in the State of Kentucky, are held and firmly bound unto Amanda M. Walker, defendant in error in the above-styled case, in the sum of thirty-five thousand dollars, lawful money of the United States, to be paid to said Amanda M. Walker; for the payment of which, well and truly to be made, we bind ourselves and each of us, and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 26th day of February, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas the above-named James A. Briggs, executor of the will of Charles M. Briggs, deceased, has sued out a writ of error from the court of appeals of Kentucky to the Supreme Court of the United States to reverse the judgment and decree rendered in the above-entitled suit before the said court of appeals of Ken-
170 tucky on the fourth day of December, 1897:

Now, therefore, the condition of this obligation is such that if the above-named James A. Briggs, executor of the will of Charles M. Briggs, shall prosecute the said writ of error to effect and answer all damages and costs if he fail to make said writ of error good, then this obligation shall be void; otherwise the same shall remain in full force and effect.

J. A. BRIGGS, [SEAL.]
Executor of the Will of Charles M. Briggs, Deceased.
J. E. POTTER. [SEAL.]
W. J. POTTER. [SEAL.]
H. P. POTTER. [SEAL.]

Witnesses:
GEO. WILLIS.
R. W. McSWINE.
WM. D. McELROY.

Examined and approved this 26th day of February, 1898.
J. H. HAZELRIGG,
Acting Chief Justice of the Court of Appeals of Kentucky.

COMMONWEALTH OF KENTUCKY:

Supersedeas Bond on a Writ of Error in the Court of Appeals of Kentucky to the Supreme Court of the United States.

Court of Appeals of Kentucky.

JAMES A. BRIGGS, Executor of the Will of Charles M. Briggs, Deceased, Plaintiff in Error,
vs.
171 AMANDA M. WALKER and OHIO VALLEY BANKING AND TRUST COMPANY, Administrator of the Estate of A. L. Shotwell, Deceased, Defendants in Error.

Know all men by these presents that we, James A. Briggs, executor of the will of Charles M. Briggs, deceased, and J. E. Potter, W. J. Potter, and H. P. Potter, as his sureties, of Warren county, in the State of Kentucky, are held and firmly bound unto Ohio Valley Banking and Trust Company, administrator of the estate of A. L. Shotwell, deceased, defendant in error in the above-styled case, in the sum of thirty-five thousand dollars, lawful money of the United States, to be paid to said Ohio Valley Banking and Trust Company, administrator of the estate of A. L. Shotwell, deceased; for the payment of which, well and truly to be made, we bind ourselves and each of us, and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 26th day of February, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas the above-named James A. Briggs, executor of the will of Charles M. Briggs, deceased, has sued out a writ of error from the court of appeals of Kentucky to the Supreme Court of the United States to reverse the judgment and decree rendered in the above-entitled suit before the said court of appeals of Kentucky on the fourth day of December, 1897:

Now, therefore, the condition of this obligation is such
172 that if the above-named James A. Briggs, executor of the will of Charles M. Briggs, shall prosecute the said writ of error to effect and answer all damages and costs if he fail to make said writ of error good, then this obligation shall be void; otherwise the same shall remain in full force and effect.

J. A. BRIGGS, [SEAL.]
Executor of the Will of Charles M. Briggs, Deceased.
J. E. POTTER. [SEAL.]
W. J. POTTER. [SEAL.]
H. P. POTTER. [SEAL.]

Witnesses:
GEO. WILLIS.
R. W. McSWINE.
WM. D. McELROY.

Examined and approved this 26th day of February, 1898.
J. H. HAZELRIGG,
Acting Chief Justice of the Court of Appeals of Kentucky.

173 COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, hereby certify, in accordance with the writ of error herewith returned, a copy of which is on file in my office, that the preceding 172 pages contain a true, full, and complete transcript of the record and proceedings had in the said court of appeals on the appeal of Charles M. Briggs' executor, appellant, against Amanda M. Walker, &c., appellees, from the Jefferson circuit court, together with copies of the petition for writ of error and assignment of errors and bonds, as the same appears of record and on file in my office.

Seal Kentucky Court of Appeals.

In witness whereof I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Kentucky, this 4th day of March, A. D. 1898.

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

Fee for this transcript, $61.30.

174 UNITED STATES OF AMERICA:

To Amanda M. Walker and Ohio Valley Banking and Trust Company, administrator of the estate of A. L. Shotwell, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of Kentucky, wherein James A. Briggs, executor of Charles M. Briggs, deceased, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. H. Hazelrigg, acting chief justice of the court of appeals of Kentucky, this 26th day of February, in the year of our Lord one thousand eight hundred and ninety-eight.

J. H. HAZELRIGG,
Acting Chief Justice of the Court of Appeals of Kentucky.

Service accepted.

W. B. DIXON,
Att'y for Ohio Valley Banking & Trust Co., Adm'r.
HELM & BRUCE,
Att'ys for Amanda M. Walker.

Endorsed on cover: Case No. 16,823. Kentucky court of appeals. Term No., 610. James A. Briggs, executor of Charles M. Briggs, deceased, plaintiff in error, *vs.* Amanda M. Walker and Ohio Valley Banking & Trust Company, administrator of the estate of A. L. Shotwell, deceased. Filed March 14th, 1898.

No. 610. 260.

610

FILED.
APR 21 1898
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

JAMES A. BRIGGS, EXECUTOR OF THE WILL OF CHARLES M. BRIGGS, DECEASED.	*Plaintiff in Error.*
VS.	610
AMANDA M. WALKER, AND THE OHIO VALLEY BANKING & TRUST COMPANY ADMINISTRATOR OF THE ESTATE OF A. L. SHOTWELL, DECEASED.	*Defendants in Error.*

NOTICE.

Plaintiff in error will take notice that on Monday, April 25th, 1898, the defendants in error in the above entitled cause will move the Supreme Court of the United States to dismiss with damages the writ of error herein, for want of jurisdiction in that court over this cause; and with said motion will couple a motion to affirm the judgment of the Court of Appeals of Kentucky herein, in case the motion to dismiss shall be overruled.

HELM BRUCE,
Counsel for Amanda M. Walker.
SAM'L B. VANCE,
Counsel for Ohio Valley Banking & Trust Co., Administrator of A. L. Shotwell.

Receipt of a copy of the above notice, with a copy of the brief of counsel for defendants in error in support of the motions therein referred to, is hereby acknowledged.

CHAS. H. GIBSON,
Counsel for Plaintiff in Error.

April 4, 1898.

No. Orig. 260.

FILED.
APR 21 1898
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

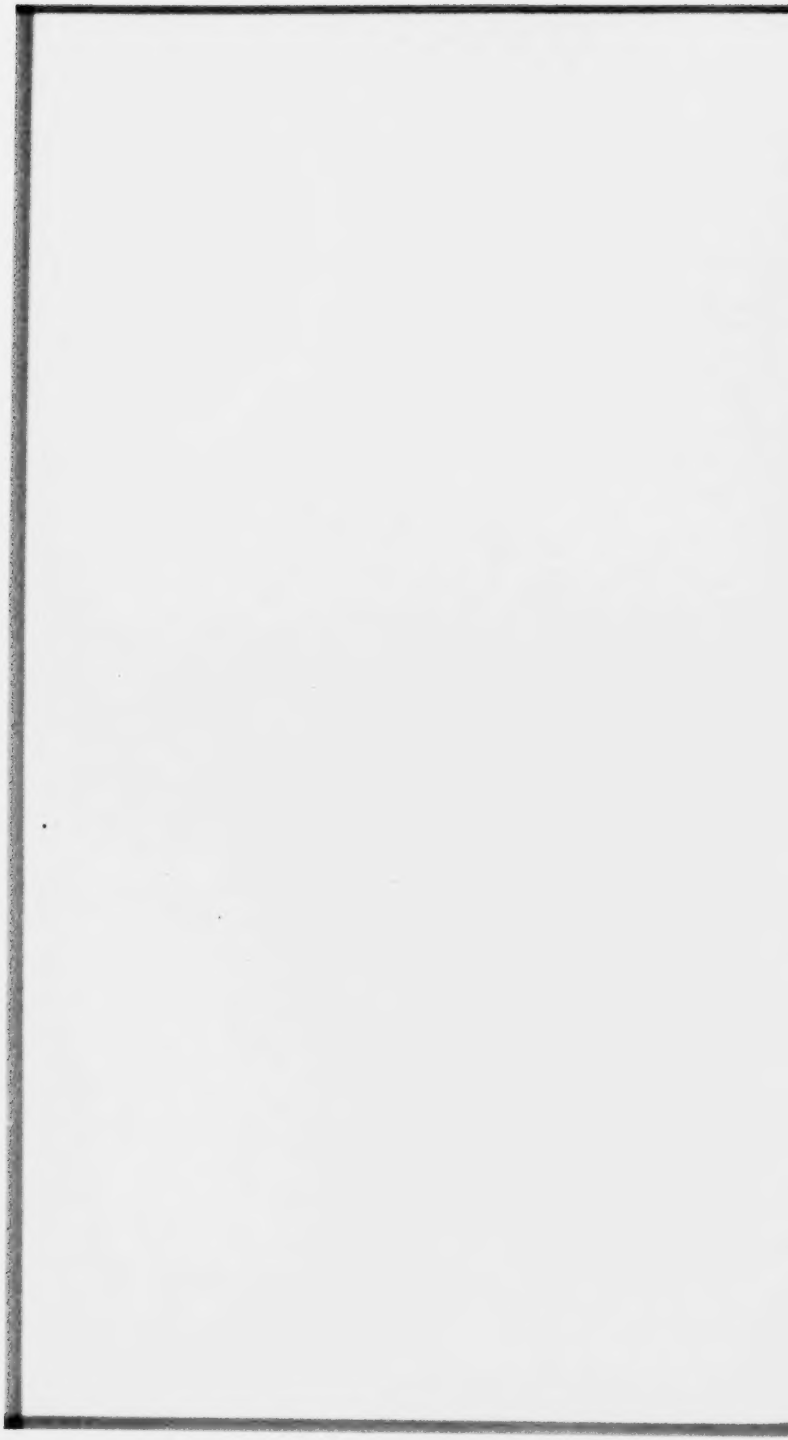
JAMES A. BRIGGS, EXECUTOR OF THE WILL OF CHARLES M. BRIGGS, DECEASED.	*Plaintiff in Error.*
VS.	610
AMANDA M. WALKER, AND THE OHIO VALLEY BANKING & TRUST COMPANY ADMINISTRATOR OF THE ESTATE OF A. L. SHOTWELL, DECEASED.	*Defendants in Error.*

MOTIONS.

1. Defendants in error move the Court to dismiss with damages the writ of error to the Court of Appeals of Kentucky herein; and for ground of such motion say there is no Federal question involved in this cause, and this Court has no jurisdiction over such cause.

2. But if this Court shall consider that it has jurisdiction over this cause, then said defendants in error move the Court to affirm the judgment of the Court of Appeals of Kentucky herein with damages, in addition to interest; and for ground of such motion say the writ of error herein was taken for delay only, and the question on which the jurisdiction of the Court depends, if there be such jurisdiction, is so frivolous as not to need further argument.

HELM BRUCE,
Counsel for Amanda M. Walker.
SAM'L B. VANCE,
Counsel for Ohio Valley Banking & Trust Company, Administrator of A. L. Shotwell.



FILED.
APR 23 1898
JAMES ... McKENNEY,
CLE

No. 610. 260.

Brief of Abert, Gibson, Marshall &
Sanders for P. E. C

Supreme Court of the United States.

OCTOBER TERM, 1893.

Filed April 23, 1898.

No. 610.

JAMES A. BRIGGS, EXECUTOR OF CHARLES M. BRIGGS, DECEASED, PLAINTIFF IN ERROR.

vs.

AMANDA M. WALKER AND OHIO VALLEY BANKING AND TRUST COMPANY, ADMINISTRATOR OF THE ESTATE OF A. L. SHOTWELL, DECEASED.

BRIEF FOR PLAINTIFF IN ERROR ON MOTION TO DISMISS OR AFFIRM.

WM. STONE ABERT.
CHARLES H. GIBSON,
JOHN MARSHALL,
D. W. SANDERS,
Counsel for Plaintiff in Error.

LAW REPORTER PRINT.

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 610.

JAMES A. BRIGGS, EXECUTOR OF CHARLES M. BRIGGS, DECEASED, PLAINTIFF IN ERROR.

vs.

AMANDA M. WALKER AND OHIO VALLEY BANKING AND TRUST COMPANY, ADMINISTRATOR OF THE ESTATE OF A. L. SHOTWELL, DECEASED.

BRIEF FOR PLAINTIFF IN ERROR ON MOTION TO DISMISS OR AFFIRM.

THE JURISDICTION.

The plaintiff in error, James A. Briggs, executor, claims the right to have this cause reviewed by this court by virtue of the provisions of Section 709, of the Revised Statutes of the United States. He insists that in his amended answers to the several answers and cross-petitions of Shotwell and Walker (Rec., pp. 25, 30), he specially set up and claimed right and title to the fund awarded and collected under the decision of the Court of Claims (Briggs *vs.* United States, 143 U. S. Rep. 346), by virtue of the Act of Congress approved June 4, 1888, chapter 348, 25 Statutes at L., p. 1075.

He procured the passage of this statute, which was for the exclusive benefit of the "*legal representatives*" of C. M.

Briggs, deceased, and upon which he relied to defeat the claims of the defendants in error, in this case.

The demurrer of the defendants in error to the said pleadings of Briggs, executor, was sustained by the Jefferson Circuit Court, Chancery Division, June 10, 1895; to which ruling Briggs, executor, excepted (Rec., p. 53).

In affirming the decision of the lower court, the Court of Appeals of Kentucky decided against the title and right specially set up and claimed by Briggs, executor, and denied the right and title thus claimed (Rec., p. 80).

The claim of Briggs, executor, as appears in the Record, fully complies with the requirements of Section 709, R. S., as construed by this court in—

Oxley Stave Company *vs.* Butler County, 166 U. S. Rep. 653.

Burthe *vs.* Denis, 133 U. S. Rep. 520.

Blagge *vs.* Balch, 162 U. S. Rep. 439.

Louisville and Nashville Rwy. Co. *vs.* Louisville, 166 U. S. Rep. 715.

Kaukauna County *vs.* Greenway Canal, 142 U. S. Rep. 269.

The plaintiff in error contends that upon a proper construction of the Act of Congress of June 4, 1888, chapter 348, the "legal representatives" of C. M. Briggs are alone entitled to the benefits arising under the act; and that the executor is entitled to distribute the net proceeds of the fund of $88,000 (received from the United States) among the "*legal representatives,*" to the exclusion of the creditor claims presented in this case in behalf of the defendants in error.

The act is as follows:

"An act for the relief of the estate of C. M. Briggs, deceased."

"Be it enacted, etc., That the Court of Claims is hereby given, subject to the proviso hereinafter mentioned, like jurisdiction to hear and determine the

claim of the *legal representatives* of C. M. Briggs, deceased, for the proceeds of four hundred and fifty-five bales of cotton, now in the Treasury of the United States, alleged to have been owned, in whole or part, by said Briggs, as is given to said court by the acts of March twelfth, eighteen hundred and sixty-three, and July second, eighteen hundred and sixty-four, upon petition to be filed in said court at any time within two years from the passage of this act, any statute of limitations to the contrary notwithstanding;

"*Provided, however*, That unless the said court shall, on a preliminary inquiry, find that said Briggs was in fact loyal to the United States Government, and that the assignment to him hereinafter mentioned was *bona fide*, the court shall not have jurisdiction of the case, and the same shall, without further proceedings, be dismissed;

"*And provided further*, That if the court shall find that the alleged assignment from one Morehead to said Briggs, of date April eighteenth, eighteen hundred and sixty-two, under which said Briggs claimed said cotton, was intended only as security to said Briggs for indebtedness, and against contingent liabilities, assumed by him for said Morehead, judgment shall be rendered for such portion of the proceeds of said cotton as will satisfy the debts and claims of said Briggs, to secure which said assignment was given;

"*Provided*, Said judgment shall not be paid out of the general fund in the Treasury arising from the sale of captured and abandoned property, but shall be paid out of the special fund charged to and accounted for by Captain G. L. Fort, assistant quartermaster at Memphis, arising from the sale of the two thousand two hundred and nine bales of cotton received by him, with which claimant's cotton was intermingled, said claimant to receive only the proportion which his cotton bears to the net proceeds accounted for by said Fort. (June 4, 1888, Ch. 348, 25 Stat. L. 1075.)" (Rec., p. 25).

In pursuance of the authority granted by this act, the executor instituted an action in the court of claims to recover the proceeds of the cotton or so much thereof as would pay him the amount named in the act, viz.: So much as would satisfy the debts and claims of said C. M. Briggs, to secure which the following contract of sale had been executed by Charles S. Morehead and delivered to Charles M. Briggs, to wit:

> "For and in consideration of money loaned and advanced heretofore by C. M. Briggs, and further valuable consideration by way of suretyship for me by said Briggs, I hereby sell and transfer to C. M. Briggs all of the cotton on my two plantations in Mississippi, near Eggs Point and Greenville. Said cotton, so sold, embraces all that I have, baled and unbaled, gathered and ungathered. This is intended to cover all cotton that I have now or may have this year on said two plantations, supposed to be about 2,000 bales.
>
> "April 18, 1862. C. S. MOREHEAD."
>
> (Rec., p. 29.)

The claims of the defendants in error are based upon the following contract, to wit:

> "In consideration of the sale and transfer this day made to me by C. S. Morehead of all the cotton on his two plantations near Eggs Point in the State of Mississippi, as specified in said sale and transfer, in writing, I hereby assume and agree to pay to Samuel J. Walker the sum of forty thousand dollars, due and owing to said Walker by said C. S. Morehead, *upon condition*, however, that I realize sufficient amount from any cotton on or from said plantations or proceeds of same, *together* with about twenty-five thousand dollars due me from said C. S. Morehead for moneys advanced and liability for him as surety; *also* about ten thousand dollars, more or less, being a claim of A. S. Shotwell as he may hereafter establish against said C. S. Morehead; but in case I should not realize sufficient to pay all of said claims

or amounts above named in full, then I am to pay or divide the amount that may be realized from said cotton proportionately, or *pro rata*, according to the respective amounts named to the parties above named; first, however, paying and refunding any moneys paid by the respective parties for or on account of expenses pertaining to same, and in case more should be realized than sufficient to pay said amounts, with interest thereon to the time of realization and payment, then any surplus to be divided, one-half to said Shotwell and (C. M. Briggs) jointly for any services, and the remaining one half to said Samuel J. Walker, but no other consideration to be paid to said Shotwell and Briggs for their service.

"April 18, 1862. C. M. BRIGGS."

(Rec., p. 18.)

The application for relief, which resulted in the act of grace on the part of Congress, was based upon the *absolute ownership* by C. M. Briggs of the four hundred and fifty-five bales of cotton, which had been seized by the Federal troops and sold and the proceeds paid into the Treasury of the United States.

The act of Congress was in the nature of a contract between the United States and the "legal representatives" of Briggs, to pay them for cotton seized by the Government, and which belonged absolutely to Briggs, and in which act Walker and Shotwell were, by necessary implication, excluded from any benefit.

The position of Briggs, executor, with relation to the act of Congress was the same as if he had notified Walker and Shotwell, with their approval, that he would not collect anything for them, but only for the "legal representatives" of Charles M. Briggs, deceased.

Herbert *vs.* Butler, 97 U. S. Rep. 322.

And by the position which was occupied by both Walker and Shotwell, they proved that the ownership of the cotton

by Briggs was absolute and *bona fide* (Rec., pp. 27, 34, 39, 51), thereby excluding themselves from all right to share in the bounty and act of grace of Congress.

> "The phrase 'legal representatives' or personal representatives has frequently been held to mean next of kin, just as the word heirs sometimes means children or more distant relatives.
>
> Wigram and O'Hara on Wills, (1872), p. 306.
>
> Emerson's Heirs *vs.* Hall, 13 Peters' Rep. 412.
>
> Relief Association *vs.* McAuley, 2 Mackey's D. C. Rep. 70.

This term has *never* been construed to mean creditors.

The act of Congress was for the benefit of "legal representatives" of C. M. Briggs, who were required to prove his loyalty and title. The act was not for the benefit of the alleged then existing creditors of said Briggs, whose loyalty was not proved—whose loyalty possibly could not have been proved and whose claims were unknown to the United States as well as to the executor, and he (the executor) never agreed to act as trustee for unknown beneficiaries.

Walker and Shotwell and all other persons (save "legal representatives") were by necessary implication, excluded by the act of Congress, from all beneficial interest in the proceeds of sale of the four hundred and fifty-five bales of cotton. The legal maxim applies: "*Expressio unius est exclusio alterius,*" and should aid in the construction of the act of Congress.

The legislative intention of Congress could not have been more clearly expressed if the act had contained the words next of kin, heirs at law, or devisees, instead of the term "legal representatives."

The fund to be collected through the judgment of the Court of Claims was by the language of the act as completely protected from the claims of creditors or assignees of C. M. Briggs as if the act had in terms declared that the executor

of Briggs should collect the claim for the cotton, and distribute it exclusively among the next of kin or devisees of said C. M. Briggs.

The construction of the term "legal representatives" depends upon the intention manifested by the party using it, and it has not therefore always the same signification. Such intention is not only to be gathered from the instrument or statute itself, but also from the surrounding circumstances then existing and the situation of the parties affected by it. And whether the inquiry is in relation to wills or statutes the same rule of construction obtains.

If Congress had intended that the fund to be awarded should be assets in the hands of the executor of Briggs for the payment of the claims of his alleged creditors, the act would have so declared. And in order that such meaning could be applied to the act, "*the jurisdiction to hear and determine the claim of the 'legal representatives' of C. M. Briggs, deceased,*" must of necessity have been omitted. It is inconsistent with rights of creditors therein.

The act of Congress expressly excluded from the jurisdiction of the Court of Claims, any right of recovery for any "*contingent liabilities assumed by him* (C. M. Briggs) for said Morehead" (see last line of p. 25, Rec.).

The claims of Walker and Shotwell may properly be classed as the contingent liabilities of Briggs, and which were expressly excluded from the provisions of the act of Congress.

There can be no doubt that much that comes to the hands of administrators or executors must go directly to heirs or devisees and is not subject to distribution in any other mode, such as specific property bequeathed to individuals.

In numerous cases the term "legal representative" has been construed as synonymous with next of kin; or, rather, as descriptive of the persons taking the estate under the

statute of distribution, who in a popular sense may be said to represent the deceased.

Upon an examination of the authorities at common law, it will be found that the construction of the term depends upon the intention manifested by the party using it. And when the term is used in wills, it is said that the words personal representative or legal representative are usually applied to executors or administrators of the person described. This legal construction only takes place when testators have not manifested in their wills any intention to the contrary; for if it appears from the dispositions in the instrument, whether by deed or will, that those words are used in reference to other persons than executors or administrators, that intention will prevail. And the meaning of terms may be gathered from surrounding circumstances and also from the writing itself.

The true construction of the term "legal representatives," as applied to the act of Congress in question means such persons as could claim the fund beneficially, which would be the next of kin or devisees of C. M. Briggs, deceased.

Emerson's Heirs *vs.* Hall, 13 Peters Rep. 409.
Bridge *vs.* Abbott, 3 Brown Chy. Rep. 226.
Jennings *vs.* Gallimore, 3 Vesey Rep. 146.
Long *vs.* Blackall, 3 Vesey Rep. 486.
Cotton *vs.* Cotton, 2 Beavan Rep. 67.
Phyfe *vs.* Phyfe, 3 Bradf. Sur. Rep. 45.
Ware *vs.* Fisher, 2 Yeates Rep. 578.
Thompson *vs.* Young, 25 Md. Rep. 450, 461.
2 Jarmin on Wills (*39), 4th Am. Edition.
Blagge *vs.* Balch, 162 U. S. Rep. 465.
Relief Association *vs.* McAuley, 2 Mackey's Rep. 70.

THE MOTION TO AFFIRM.

They who come into a court of equity seeking equity must come with clean hands and a pure conscience.

If the executor in claiming, as he did, to Congress and

the Court of Claims, that the claim of the "legal representatives" of C. M. Briggs, deceased, was for the proceeds of cotton which belonged *absolutely and bona fide* to said C. M. Briggs, which claim was supported by the sworn statements of Walker and Shotwell; then their conduct was such that a fraud was thereby perpetrated upon the Government of the United States, and they cannot now take advantage of and profit by their own wrong.

They must themselves be free from false representations before they can ask the protection of a court of equity to aid them in the enjoyment of the profits of their own false representation.

It is strenuously insisted that a court of equity would violate its principles and abuse its powers, by consenting to aid them in accomplishing their purpose.

Such a scheme is assuredly not one that a court of equity can be required to aid or sanction. To do so would be to forfeit its name and character.

The court will never assist wrong-doers in effectuating their wrongful purpose.

The judgment of the Court of Claims was conclusive alike upon Briggs' executor for the payment of the claim of the "legal representatives" of C. M. Briggs, deceased, and also conclusive upon Walker and Shotwell, who were, by their conduct in the case, in privity with the executor. And the judgment thus obtained through the evidence of Walker and Shotwell operated as an estoppel against their claims.

On page 7 of the brief of the defendants in error, their counsel cite, as an exactly similar case Hobbs *vs.* McLain, 117 U. S. Reports, 580; but that case is clearly distinguishable from this one, in that in this case the witnesses testified that the ownership of the cotton by Briggs was *absolute*, and thereby they asserted that they had no interest in the claim pending in the Court of Claims.

In that case the maxim "*In pari delicto melior est conditio possidentis et defendentis,*" might well have been applied. This is a maxim of public policy equally respected in courts of law and courts of equity.

1 Story's Equity Juris., Sec. 61.

It was not, however, called to the attention of the court. Neither was the proposition requiring a party seeking equity to come into court with clean hands.

In that case the plaintiff appears to have relied solely upon the doctrine of equitable estoppel. The other two propositions which might have controlled the case, were not presented by counsel nor considered by the court.

And the Record in this case, fails to show, that the executor or "legal representatives" of C. M. Briggs, deceased, had at the time of the passage of the act of Congress, or during the pendency of the case in the Court of Claims, any knowledge of the contract, under which the claims of Walker and Shotwell were established.

The propositions already discussed, seem to be decisive of the case at bar. But the court will pardon us for calling its attention to the following legal propositions:

First.

Contracts are strictly construed, and parties are bound by the *terms* and *conditions*, which they *voluntarily* impose upon themselves.

Second.

Every *condition precedent* specified in a contract, must be *pleaded* and *proven* before the party can recover upon the contract relied upon.

Third.

Where the condition precedent does not occur, by reason of the conduct or act of a third party, over whose action or

conduct the contracting parties have no control, then the contract can not be enforced.

By the terms of the written agreement under which the defendants in error claimed the right to recover, the obligation of C. M. Briggs to pay was ONLY UPON CONDITION that *said Briggs* realized from any cotton on or from said plantations.

The happening of said event was, by the very terms of the contract, a condition precedent to payment.

Briggs, in his lifetime, made every effort in good faith to get possession of the cotton; but by reason of the action of the Federal authorities, the cotton was seized and sold, and the money arising therefrom paid into the Treasury of the United States The performance of said condition precedent, was prevented by the action of other persons over whose conduct Briggs could exercise no control.

This action of the Federal authorites, alone, prevented the performance of the condition precedent.

The following authorities are relied upon as establishing the correctness of the foregoing propositions:

Stephany *vs.* Castan, 168 Ill. Rep. 59.
Cincinnati Ry. *vs.* Bensley, 51 Fed. Rep. 740.
Martinsburg Ry *vs.* March, 114 U. S. Rep. 552.
United States *vs.* Robeson, 9 Peters Rep. 327.
Dermott *vs.* Jones, 23 How. Rep. 231.

RESPONSE TO ADDENDUM BRIEF OF DEFENDANTS IN ERROR.

It appears in the Record (pp. 1 and 2) that the original suit was filed for the purpose of obtaining a final and complete settlement of the accounts of James A. Briggs, executor.

The original parties were said James A. Briggs, Josephine Briggs, Charles M. Briggs, Herbert Grasty, Emily Grasty, defendants; and Henry A. McLemore, guardian of John Briggs McLemore and Lizzie R. McLemore. John Briggs McLemore, Lizzie R. McLemore, by their next friend, H. A. McLemore, were plaintiffs.

That suit could not have been maintained, nor could the court even have had jurisdiction to make any order therein, not even to render the judgments relied upon by the defendants in error, except upon the necessary determination that the said parties were the legal representatives and devisees under the will of Charles M. Briggs, deceased.

The fund in controversy was received by said James A. Briggs, executor, by virtue of the decision of this court, reported in 143 U. S. Reports; and on page 349 of the Report we find this statement:

> "C. M. Briggs having died, *his brother*, James A. Briggs, was on the 15th of July, 1875, appointed executor of his estate by the county court of Jefferson County, in Kentucky. . . . He accepted the trust, and qualified by taking the necessary oath and executing the required bond."

The fact of the relationship of this executor to his deceased brother was as conclusively established by this court, as the right of said James A. Briggs to receive the fund.

We respectfully and confidently submit that both motions filed in this case should be overruled.

WM. STONE ABERT.
CHARLES H. GIBSON,
JOHN MARSHALL,
D. W. SANDERS,
Counsel for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 610.

JAMES A. BRIGGS, EXECUTOR OF CHARLES M. BRIGGS, DECEASED, *Plaintiff in Error,*

vs

AMANDA M. WALKER, AND OHIO VALLEY BANKING & TRUST COMPANY, ADMINISTRATOR OF THE ESTATE OF A. L. SHOTWELL, DEC'D. *Defendants in Error.*

BRIEF FOR DEFENDANTS IN ERROR ON MOTION TO DISMISS OR AFFIRM.

STATEMENT.

On April 18, 1862, C. S. Morehead gave to his nephew. Charles M. Briggs, a bill of sale for quite a large amount of cotton in Mississippi in the following terms (Rec., p. 25), to-wit:

"For and in consideration of money loaned and advanced heretofore by C. M. Briggs, and further valuable consideration by way of suretyship for me by said Briggs, I hereby sell and transfer to said C. M. Briggs all of the cotton on my two plantations in Mississippi near Eggs Point and Greenville. Said cotton, so sold, embraces all that I have, baled and unbaled, gathered and ungathered. This is intended to cover all cotton that I have now or may have this year on said two plantations, supposed to be 2,000 bales.

"April 18, 1862. C. S. MOREHEAD."

Contemporaneously with the execution of this bill of sale, and as a part of the consideration for it, Briggs executed to Samuel J. Walker (a son-in-law and creditor of Morehead) the following instrument (Rec. p. 5), to wit:

"In consideration of the sale and transfer this day made to me by C. S. Morehead of all the cotton on his two plantations near Eggs Point in the State of Mississippi as specified in said sale and transfer in writing, *I hereby assume and agree to pay to Samuel J. Walker the sum of forty thousand dollars due and owing to said Walker, by C. S. Morehead*, upon condition however that I realize sufficient amount from any cotton on or from said plantations *or proceeds of same*, together with about twenty-five thousand dollars due me from said C. S. Morehead for moneys advanced and liability for him as surety, *also about ten thousand dollars more or less, being a claim of A. L. Shotwell*, as he may hereafter establish against said C. S. Morehead, *but in case I should not realize sufficient to pay all of said claims or amounts above named in full, then I am to pay or divide the amount that may be realized from said cotton proportionately or pro rata according to the respective amounts named to the parties above named*; first however paying and refunding any moneys paid by the respective parties for or on account of expenses pertaining to same, and in case more should be realized than sufficient to pay said amounts with interest thereon, to the time of realization and payment, then any surplus to be divided, one-half to said Shotwell and C. M. Briggs jointly for any services, and the remaining one-half to said Samuel J. Walker, but no other consideration to be paid to said Shotwell and Briggs for their service.

C. M. BRIGGS.

April 18th, 1862."

(Our italics).

Walker subsequently assigned this writing to his wife, the present defendant in error, Amanda M. Walker, who is now his widow, said Samuel J. Walker being long since dead. And A. L. Shotwell being now dead, the Ohio Valley Banking & Trust Company is now administrator of his estate.

After the transfer of this cotton to Briggs by Morehead, it was seized by the United States authorities during the war; and was subsequently sold, and the proceeds of sale paid into the Treasury of the United States. After the war, Briggs, who was a loyal citizen, presented a claim against the Government for the proceeds of sale of his cotton. He employed counsel and agreed to give them one-half of what they should recover. The claim ran the usual course of such claims against the Government. It dragged along for many, many years. In the meantime Briggs died in 1875, and the executor of his will, James A. Briggs, present plaintiff in error, took up the prosecution of the claim, leaving the matter, however, in the hands of the same attorneys as those employed by the testator.

In 1888 an act of Congress was passed giving the Court of Claims jurisdiction to hear and determine the claim for the proceeds of sale of this cotton, which act was in the following words:

"Be it enacted, etc. That the Court of Claims is hereby given, subject to the proviso hereinafter mentioned, like jurisdiction to hear and determine the claim of the legal representatives of C. M. Briggs, deceased, *for the proceeds of four hundred and fifty-five bales of cotton*, now in the Treasury of the United States, alleged to have been owned, in whole or part, by said Briggs, as is given to said court by the acts of March twelfth, eighteen hundred and sixty-three, and July second, eighteen hundred and sixty-four, upon petition to be filed in said court at any time within two years from the passage of this act, any statute of limitations to the contrary notwithstanding:

"Provided, however, that unless the said court shall, on a preliminary inquiry, find that said Briggs was in fact loyal to the United States Government, and that the assignment to him hereinafter mentioned was *bona fide*, the court shall not have jurisdiction of the case, and the same shall, without further proceedings be dismissed.

"And provided further, that if the court shall find that the alleged assignment from one Morehead to said Briggs of date April 18th, eighteen hundred and sixty-two, under which said Briggs claimed said cotton, was intended only as security to said Briggs for indebtedness, and against contingent liabilities assumed by him for said Morehead, judgment shall be rendered for *such portion of the proceeds of said cotton* as will satisfy the debts and claims of said Briggs, to secure which said assignment was given:

"Provided, *said judgment shall not be paid out of the general fund* in the Treasury arising from the sale of captured and abandoned property, *but shall be paid out of the special fund charged to and accounted for by Captain G. L. Fort, assistant quartermaster at Memphis, arising from the sale of the two thousand two hundred and nine bales of cotton received by him, with which claimant's cotton was intermingled*, said claimant to receive only the proportion which his cotton bears to the net proceeds accounted for by said Fort." (Our italics. Rec. p. 25.)

The final result of the litigation before the Court of Claims was that Briggs' executor recovered a judgment for $88,000, which was paid in March, 1894, and of which one-half, to-wit, $44,000, went to the attorneys; and the remaining sum of $44,000 is now in the hands of the executor, plaintiff in error.

Promptly after the collection of the money, to wit, on April 7th, 1894, Mrs. Walker made her demand upon the executor for the payment of the amount due to her, under the contract between Walker and Briggs of April 18th, 1862.

Subsequent to this demand, Briggs, the executor, in the suit of McLemore vs. Briggs, in the Louisville Chancery Court, in which he had been from time to time settling his accounts as executor, (being a suit for a settlement of the estate of Chas. M. Briggs), filed a supplemental answer and cross-petition, in which he alleged

that "since the last settlement of his accounts herein he has succeeded in collecting from the United States Government *the cotton claim* referred to in his previous settlements herein;" and in which pleading he further stated that Mrs. Walker, and the administrator of Shotwell, were asserting some claims against the same, and in which he asked that they be made parties defendant to that action, and required to assert their claims therein. (Rec. p. 2).

The separate answers and counter-claims of Mrs. Walker and of Shotwell's administrator were filed pursuant to this invitation, *being based solely on the agreement of April 18th, 1862*, between Briggs and Walker, and saying that the money had been paid Brigg's executor by the United States on account of this cotton claim, but *making no reference whatever to the act of Congress heretofore mentioned.* (Rec. p. 2.)

To these counter-claims the executor first filed answers, each of which was simply a traverse, denying knowledge or information sufficient to form a belief as to the allegations of the pleadings asserting the execution of the instruments relied on, and the existence of the indebtedness asserted. (Rec. 7 & 20.) It is not claimed that any Federal question was presented by the issues thus made.

Subsequently, however, the executor filed an amended answer to each of the claims; and it is out of this amendment that a Federal question is claimed to arise.

In this pleading the executor sets up the act of Congress heretofore referred to, and says that by this act, as well as by the judgment of the Court of Claims thereunder, he was limited in his recovery to such sum as would satisfy the debts and claims from *Morehead* to *Briggs*, to secure which the bill of sale was given; and that he, as the executor of Briggs, only received and recovered from the United States such sum as was owing directly to his testator from Morehead, and did not recover anything whatever on account of anything that might have been due from Morehead to either Samuel J. Walker or A. L. Shotwell. He further alleged that the passage of this act of Congress was an *act of grace*, on the part of the United States, solely for the benefit of Briggs, to permit a claim to be asserted against the proceeds of the cotton heretofore mentioned, to the extent that Morehead was indebted to Briggs; and that long prior thereto the claim for any part of the proceeds of the said cotton had been *barred by limitation;* and that the act was solely for the benefit of Briggs, and not for the benefit of any one else, directly or indirectly.

He then further stated quite at length that, while the proceedings were pending before the Court of Claims, Walker and Shotwell had testified in favor of Briggs to the effect that the bill of sale was a *bona fide* transaction, and had concealed from the Government the fact that either of them had any interest in the matter. The facts thus set out quite at length were evidently

intended as a plea of estoppel. (Rec. p. 24 and 29.) A transcript of the testimony here referred to, and on which the charge of misrepresentations and concealment was based, was filed as an exhibit with the pleading. (The testimony of Shotwell is shown in this record on pages 34 to 51 ; and the testimony of Walker on page 51.)

To this amendment Mrs. Walker and Shotwell's administrator each demurred. The Court sustained the demurer. Briggs declined to plead further ; and a judgment was entered against Briggs as executor, in favor of Mrs. Walker and Shotwell's administrator
2 for separate amounts equal to proportions of the sum in his hands, according to the terms of the agreement of April 18, 1862.

From this judgment an appeal to the Court of Appeals was taken, where it was subsequently affirmed. (Rec. p. 77.) An opinion of the Court of Appeals showing the grounds of the affirmance was filed and is part of this record (p. 77).

1. As to the plea of estoppel—the facts upon which the claim of estoppel was based being shown by the exhibits filed with the petition—the court held that there was no estoppel ; that the statements made by Walker and Shotwell were all true, with the exception possibly of one statement by Shotwell; but that this was immaterial and did not deceive or defraud the Government.

2. As to Briggs' claim that the act of Congress, when properly construed only allowed him to prove and recover an amount equal to the sums due from Morehead to Briggs, and that he was allowed nothing on account of anything due from Morehead to Walker or Shotwell, the Court *conceded this to be the proper construction of the act.* But the Court held that this did not impress on the money received by Briggs "an exemption from Briggs' obligations."

3. As to the suggestion that the Government had waived the statute of limitations in favor of Briggs, the Court conceded this; but called attention to the fact that the allowance to Briggs was "certainly not a gratuity;" for he was required by the act to establish his claim by proof and have it determined in a court, it being furthermore expressly provided in the act that he should not be paid out of the general funds in the Treasury, but only out of the sales of cotton by Captain Fort, with which the claimant's cotton had been intermingled, and then only in the proportion which his cotton bore to the net proceeds of the Fort sales.

In other words the Court, after disposing of the plea of estoppel, and coming to the construction of the act of Congress, conceded the executor's construction to the effect that he was only allowed to recover from the Government the amount due from Morehead to Briggs, and nothing on account of any amounts due from Morehead to either Walker or Shotwell ; and further conceded that the act was an act of grace in the sense of being a waiver of the plea of limitation ; but called attention to the fact that it was not a gratuitous gift of this money to Briggs, but was

a direct recovery on his part of this money as the *proceeds of sale of the cotton* referred to in the bill of sale from Morehead to Briggs, which was the same cotton as that referred to in the contract between Briggs and Walker; and therefore held that, *by the terms of this contract* between Briggs and Walker, Briggs was bound to pay to Walker and to Shotwell's administrator amounts equal to such proportions of the proceeds of sale thus recovered as were fixed by the terms of the contract. (See opinion of Court of Appeals, Rec. 77, 81).

The executor now seeks by this writ of error to reverse this judgment. And the defendants in error have moved to dismiss the writ for want of jurisdiction in the court, and have coupled with this a motion to affirm.

MOTION TO DISMISS.

We are not able to perceive any Federal question involved in this record.

Of course the decision of the Court on the *question of estoppel*, holding that the statements objected to were substantially true, and that no one was deceived thereby, and hence no estoppel raised, does not involve a Federal question.

Then as to the construction of the act of Congress there can be no doubt as to what the true construction is, and the *court conceded the construction contended for by the plaintiff in error.* He claimed in his answer that he was only allowed under that act to recover an amount equal to the debts due from Morehead to Briggs. And the court conceded this construction to be correct.

Again, he claimed that the act was an act of grace in waving the plea of limitations; and the *court conceded this.*

It is true the court held that this was *not a gratuity*, but that what he recovered was on account of the *proceeds of sale of his cotton*, after having judicially established his title by showing the *bona fides* of the bill of sale, and being limited in recovery to the fund realized by the Government from the sale of this cotton and other cotton with which it had been commingled. *But Briggs made no claim by his pleading which was in contravention of this holding by the Court of Appeals.* He did not claim in his pleading that this money had been given to him without consideration by the Government. On the contrary after setting up the act of Congress he says that *in pursuance of that act* he "instituted an action against the United States in the Court of Claims *to recover the proceeds of sale of the cotton aforesaid;*" and that in that action it was adjudged that the assignment from Morehead to his testator was *bona fide* and that he recovered only such sum as was directly owing from Morehead to his testator. And again in the same connection, in speaking of the passage of the act of Congress, he

says it was an act of grace "to permit this defendant *to assert a claim against the proceeds of said cotton*, to the extent that said Morehead was indebted to his testator." (Rec. p. 26.)

Thus it will be seen that the Court of Appeals did not decide against Briggs any question presented by him, *which depended upon the construction of the act of Congress.*

It is true the court held that Briggs was liable to pay this money to Walker and to Shotwell's administrator, which liability Briggs denied; but this conclusion by the court was *based upon the contract between Briggs and Walker*, and was not in any particular based upon a construction of the act of Congress different from that put upon it by Briggs. He did not deny, but expressly alleged, that he had sued for and recovered this money as part of the proceeds of sale of this cotton; and this being true, the court simply held, *as a matter of construction of the contract between him and Walker*, that he was bound by the terms of that contract to pay to Mrs. Walker and to Shotwell's administrator the amounts for which the judgment was entered.

Surely there was no federal question involved in this decision.

We suppose it will not be claimed that this money is exempt from the payment of Briggs' obligations, simply because it was received from the United States Government. Certainly no such exemption was "specially set up or claimed" in the pleading of the executor, as was necessary if he meant to make such point. (Oxley Stave Co. vs. Butler County, 166 U. S. 648, 654.) As heretofore said, the claims of both Mrs. Walker and Shotwell's administrator were based solely on the *personal obligation of Briggs*, evidenced by the contract of April 18, 1862, and in no manner upon the act of Congress, and the same is true of the judgment of the Court of Appeals of Kentucky.

We observe that the petition for rehearing by the executor in the Court of Appeals is printed in this record. But if it be intended thereby to show that some federal question was presented, which was decided against the executor, it is sufficient to say that this court has decided in many cases that a federal question cannot be thus raised. (Loeber vs. Schroeder, 149 U. S., 585.)

MOTION TO AFFIRM.

If on any theory it be determined that a federal question was presented of which this Court has jurisdiction, then we submit that the decision of the Court was so manifestly correct that the judgment should be affirmed, without argument.

As to the claim of estoppel, plainly no one was misled. And if it could be claimed that the Government was deceived, this would constitute no defense for Briggs, as was expressly held by this Court in an exactly similar case in Hobbs vs. McLean, 117 U. S. 580.

And on the other question, in as much as the act of Congress itself shows, and as Briggs himself in effect concedes, that the amount recovered by him was *on account of the proceeds of sale of the cotton transferred from Morehead to Briggs*, and which was the cotton referred to in the contract between Briggs and Walker, we do not see how the Court could avoid concluding that he was bound to pay, under his contract with Walker, whereby he bound himself absolutely as follows:

"*I hereby assume and agree to pay to Samuel J. Walker the sum of $40,000.* due and owing to said Walker by C. S. Morehead, upon condition, however, that I realize sufficient amount from any cotton on or from said plantations, *or proceeds of same*, together with about $25,000 due me from said C. S. Morehead for moneys advanced and liability for him as surety, *also about $10,000 more or less, being a claim of A. L. Shotwell*, as he may hereafter establish against said C. S. Morehead, *but in case I should not realize sufficient to pay all said claims or amounts above named in full*, then I am to pay or divide the amount that may be *realized from said cotton* proportionately or pro rata, according to the respective amounts named to the parties above named." (Rec., p. 5).

CONCLUSION.

We therefore respectfully submit that the writ of error should be dismissed *with damages*, or, if not dismissed, that the judgment of the Court of Appeals should be affirmed with interest and *damages*, as provided in rule 23 of this Court.

Respectfully submitted,

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HELM BRUCE,
Counsel for Amanda M. Walker.
SAMUEL B. VANCE,
Counsel for Ohio Valley Banking & Trust Co., Administrator of Shotwell.

CHAS. M. WALKER,
Of Counsel for Walker.

WM. B. DIXON,
Of Counsel for Shotwell's Adm'r.

ADDENDUM.

We have just been referred by plaintiff in error to the cases of Blagge vs. Balch, 162 U. S. 439, and the line of cases therein cited, which we had not heretofore read.

The case at bar is wholly different from the cases cited. The contention now made *in this court*, seeking to get in line with those cases, seems to be that the money received from the United States by Jas. A. Briggs, who is the executor of the will of Charles M. Briggs (the owner of the cotton), was not really recovered *as part of the estate of Charles M. Briggs*, and that it never became part thereof, but was received as a gift for the benefit of the "heirs," or "distributees," or "next of kin," &c., of Charles M. Briggs. In other words, according to the contention in this court, if there are to-day any unsatisfied creditors of the estate of Charles M. Briggs (leaving defendants in error out of view), they will have no right to be paid out of this money; for, according to this contention, it does not belong to the estate of Charles M. Briggs, but belongs to some sons or daughters, or grandsons or granddaughters, or brothers or sisters, or nieces or nephews, &c., of Charles M. Briggs.

Certainly no such title or right was ever "specially set up or claimed" in the State court. Everything in the record contradicts such a claim. For all that appears in this record, there may be no kin of Charles M. Briggs in existence. Certainly none such appear from this record to be claiming the fund. The pleading of plaintiff in error says the act of Congress relied on was entitled "An Act for the relief of *the estate* of Charles M. Briggs deceased," and shows that in the body of the act the claim is spoken of as "the claim of the legal representatives of Charles M. Briggs, deceased" (Rec. 25.) In every pleading filed by the plaintiff in error he styles himself "James A. Briggs, executor of the will of Charles M. Briggs." He nowhere says there is any particular person who is entitled to this money. The whole record shows that he claims the fund simply as the personal representative of Charles M. Briggs, deceased, as part of his *general estate*, which he says he as executor "*recovered*" "in an *action* against the United States" (Rec. 26).

We insist, therefore, that there is no question presented in this record of which this court has jurisdiction.

But if such a claim as is now made had been made in the State Court, we insist, in the light of Blagge vs. Balch, 162 U. S. 439, that it is too plain to need further argument, that the act of Congress was never understood or intended to make a *gift* to any one; that it simply recognized that the government had in its treasury, in a special account, the actual proceeds of sale of cotton which had been forcibly seized and sold, and which had belonged to Charles M. Briggs (as he claimed). And therefore the act was passed for the benefit of his "*estate*"—not for the benefit of his "heirs" or "next of kin"—allowing his "legal representatives" to sue "for the proceeds of four hundred and fifty-five bales of cotton, now in the Treasury of the United States." And pursuant to this permission, *his executor*—not his children, or kin, but his executor—sued and, *after proving the title of his testator*, as required by the act, "recovered" the proceeds referred to.

The plea of limitation, it is true, was waived, but was waived in favor of "the estate" of Charles M. Briggs. And that the waiver of such a plea does not convert the payment of an honest debt into a gratuity is surely too well settled to need argument. If this had been a mere *gift*, there would have been no occasion for waiving, or in any wise referring to, the "statute of limitations." That statute deals with "demands," not "gifts."

JAMES P. HELM,
HELM BRUCE,
Counsel for Walker
SAM'L B. VANCE,
Counsel for Shotwell's Adm'r.

I have seen this "Addendum," and consent that it may be filed.

CHARLES H. GIBSON,
Of Counsel for Plaintiff in error.

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BRIGGS *v.* WALKER.

ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

No. 260. Submitted April 25, 1898. — Decided October 17, 1898.

Under an act of Congress, entitled "an act for the relief of the estate" of a certain person deceased, and conferring upon the Court of Claims jurisdiction to hear and determine "the claim of the legal representatives" of that person for the proceeds in the treasury of his property taken by the United States, the executor is the legal representative, and any sum recovered by him by suit in that court is assets of the estate and subject

Statement of the Case.

to the debts of the testator; and a decision of the highest court of a State in favor of creditors against the executor presents a Federal question, as to which it may be reviewed by this court upon a writ of error sued out by the executor.

THE controversy in this case was between the executor and two creditors of Charles M. Briggs, and arose as follows:

On April 18, 1862, during the war of the rebellion, Charles S. Morehead, of Kentucky, executed and delivered to his nephew, Charles M. Briggs, a bill of sale of cotton in Mississippi, in these terms:

"For and in consideration of money loaned and advanced heretofore by C. M. Briggs, and further valuable consideration by way of suretyship for me by said Briggs, I hereby sell and transfer to said C. M. Briggs all the cotton on my two plantations in Mississippi near Eggspoint and Greenville. Said cotton so sold embraces all I have, baled and unbaled, gathered and ungathered. This is intended to cover all cotton that I have now or may have this year on said two plantations, supposed to be about 2000 bales."

At the same time, Briggs executed and delivered to Samuel J. Walker, Morehead's son in law, a writing in these terms:

"In consideration of the sale and transfer this day made to me by C. S. Morehead of all the cotton on his two plantations near Eggspoint in the State of Mississippi, as specified in said sale and transfer in writing, I hereby assume and agree to pay to Samuel J. Walker the sum of forty thousand dollars due and owing to said Walker by said C. S. Morehead, upon condition, however, that I realize sufficient amount from any cotton on or from said plantations or proceeds of same, together with about twenty-five thousand dollars due me from said C. S. Morehead for moneys advanced and liability for him as surety; also about ten thousand dollars, more or less, being a claim of A. S. Shotwell as he may hereafter establish against said C. S. Morehead; but in case I should not realize sufficient to pay all of said claims or amounts above named in full, then I am to pay or divide the amount that may be realized from said cotton, proportionately or *pro rata* according to the respective amounts named, to the parties above named, first,

however, paying and refunding any moneys paid by the respective parties for or on account of expenses pertaining to same; and in case more should be realized than sufficient to pay said amounts, with interest thereon to the time of realization and payment, then any surplus to be divided, one half to said Shotwell and C. M. Briggs jointly for any services, and the remaining one half to said Samuel J. Walker, but no other consideration to be paid to said Shotwell and Briggs for their service."

Briggs at once took steps to get possession of the cotton, but was prevented by the Federal forces and the Confederate forces in the vicinity. This cotton, amounting to four hundred and fifty bales, was finally seized, together with other cotton, by Captain G. L. Fort, assistant quartermaster general in the United States Army, in behalf of the United States, and was by him sold and the proceeds paid into the Treasury of the United States.

Briggs died in 1875, after repeated and unsuccessful efforts, through his attorneys, to obtain the proceeds of the cotton in question; and his executor continued the efforts, and, through the same attorneys, procured the passage of the act of Congress of June 4, 1888, c. 348, copied in the margin.[1]

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[1] An act for the relief of the estate of C. M. Briggs, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims is hereby given, subject to the proviso hereinafter mentioned, like jurisdiction to hear and determine the claim of the legal representatives of C. M. Briggs, deceased, for the proceeds of four hundred and fifty-five bales of cotton, now in the Treasury of the United States, alleged to have been owned, in whole or in part, by said Briggs, as is given to said court by the acts of March twelfth, eighteen hundred and sixty-three, and July second, eighteen hundred and sixty-four, upon petition to be filed in said court at any time within two years from the passage of this act, any statute of limitations to the contrary notwithstanding: Provided, however, that unless the said court shall, on a preliminary inquiry, find that said Briggs was in fact loyal to the United States Government, and that the assignment to him hereinafter mentioned was *bona fide*, the court shall not have jurisdiction of the case, and the same shall, without further proceedings, be dismissed: And provided further, that if the court shall find that the alleged assignment from one Morehead to said Briggs, of date April eighteenth, eighteen

Under the provisions of that act, Briggs's executor brought suit in the Court of Claims and therein recovered the sum of $88,000. See *Briggs* v. *United States*, 25 C. Cl. 126; 143 U. S. 346; 27 C. Cl. 564. Half of that sum was paid to the attorneys, pursuant to a contract between them and Briggs; and the rest, being the sum of $44,000, came to the hands of the executor.

Thereupon the executor, in a suit previously brought against him for the settlement of Briggs's estate, in the chancery division of the circuit court for the county of Jefferson and State of Kentucky, set up, by amended answer, that he had collected this sum of $44,000; and prayed that Walker's widow (to whom Walker had assigned his claim) and Shotwell's administrator might be made parties to the suit, and be required to set up their claims to this sum. And Mrs. Walker and Shotwell's administrator filed petitions in the cause, claiming the sums mentioned as due to Walker and to Shotwell, respectively, in the writing signed by Briggs, April 18, 1862, and above set forth.

To these petitions the executor of Briggs filed supplemental answers, in which, among other things, he set up the act of Congress of June 4, 1888, and the proceedings in the Court of Claims; and alleged that "in pursuance to the said act this defendant, through his said counsel, instituted an action against the United States in the Court of Claims to recover the proceeds of sale of the cotton aforesaid, and in and by said action it was finally determined and adjudged that the said

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hundred and sixty-two, under which said Briggs claimed said cotton, was intended only as security to said Briggs for indebtedness, and against contingent liabilities assumed by him for said Morehead, judgment shall be rendered for such portion of the proceeds of said cotton as will satisfy the debts and claims of said Briggs to secure which said assignment was given: Provided, said judgment shall not be paid out of the general fund in the Treasury arising from the sale of captured and abandoned property, but shall be paid out of the special fund charged to and accounted for by Captain G. L. Fort, assistant quartermaster at Memphis, arising from the sale of the two thousand two hundred and nine bales of cotton, received by him, with which claimant's cotton was intermingled, said claimant to receive only the proportion which his cotton bears to the net proceeds accounted for by said Fort. 25 Stat. 1075.

testator was loyal to the United States, and that the assignment made by said Morehead to defendant's testator was *bona fide* and founded on a valuable consideration; but this defendant was, by the act aforesaid, as well as the final judgment of the Court of Claims, limited in his recovery to such sum as would satisfy the debts and claims of his testator, to secure which the said assignment was given; and this defendant says that by the final judgment of said Court of Claims he only received and recovered from the United States such sum as was owing directly to his testator by said Morehead, and did not recover anything whatsoever for or on account of anything that may have been owing by said Morehead to A. L. Shotwell or Samuel J. Walker;" and further alleged that "the passage of the act aforesaid was an act of grace on the part of the United States for the sole benefit of this defendant, and to permit this defendant to assert a claim against the proceeds of said cotton to the extent that said Morehead was indebted to his testator; that long prior thereto all claim that had existed in favor of said testator as against the United States for any part of the proceeds of said cotton had been barred by limitation, and said claim was outlawed and worthless;" and that "it was not intended by said act that this defendant should recover anything for the benefit, directly or indirectly, of any other person."

The circuit court of Jefferson County sustained demurrers of the petitioners to the supplemental answers of the executor; and, upon a hearing, found that there was due to Walker the sum of $40,000 and to Shotwell the sum of $6681.21; and adjudged that the sum of $44,000, in the hands of the executor, after deducting his commissions, be applied *pro rata* to the payment of these two sums, and of the further sum of $25,000 due from Morehead to Briggs. The executor appealed to the Court of Appeals of Kentucky, which affirmed the judgment. 43 Southwestern Reporter, 479. Thereupon he sued out this writ of error.

The case was submitted to this court upon a motion by the defendants in error to dismiss the writ of error for want of jurisdiction, or to affirm the judgment.

Mr. James P. Helm, *Mr. Helm Bruce* and *Mr. Samuel B. Vance* for the motion.

Mr. William Stone Abert, *Mr. Charles H. Gibson*, *Mr. John Marshall* and *Mr. D. W. Sanders* opposing.

Mr. Justice Gray, after stating the case, delivered the opinion of the court.

The motion to dismiss must be overruled. An executor represents the person of the testator, and is charged with the duty of resisting unfounded claims against the fund in his hands. Co. Lit. 209*a*; *McArthur* v. *Scott*, 113 U. S. 340, 396. The record, therefore, does present the Federal question whether the right given by the act of Congress to the "legal representatives" of Charles M. Briggs was for the benefit of his next of kin to the exclusion of his creditors.

But we are of opinion that this question, which is the only Federal question in the case, must be answered in the negative, and consequently that the judgment of the Court of Appeals of Kentucky must be affirmed.

The primary and ordinary meaning of the words "representatives," or "legal representatives," or "personal representatives," when there is nothing in the context to control their meaning, is "executors or administrators," they being the representatives constituted by the proper court. *In re Crawford's Trust*, 2 Drewry, 230; *In re Wyndham's Trusts*, L. R. 1 Eq. 290; 2 Jarman on Wills, c. 29, § 5, (5th ed.) 957, 966; Williams on Executors, pt. 3, bk. 3, c. 2, § 2 (7), (9th ed.) 992; *Cox* v. *Curwen*, 118 Mass. 198; *Halsey* v. *Patterson*, 10 Stew. (37 N. J. Eq.) 445.

In *Stevens* v. *Bagwell*, 15 Ves. 139, 152, a claim by the next of kin of a naval officer to the share awarded him in a prize condemned after his death, and ordered by treasury warrant to be paid to his "representatives," was rejected by Sir William Grant, who said that the intention of the Crown in all cases of this kind is to put what is in strictness matter of bounty upon the footing of matter of right, and not to exercise any kind of judgment or selection with regard to the persons

to be ultimately benefited by the gift; that the representatives to whom the Crown gives are those who legally sustain that character; but the gift is made in augmentation of the estate, and is to be considered as if it had been actually part of the officer's property at the time of his death.

In this court, it is well settled that moneys received by the United States from a foreign government by way of indemnity for the destruction of American vessels, and granted by act of Congress to the owners of those vessels, without directing to whom payment shall be made in case of death or insolvency, pass to the assignees in bankruptcy for the benefit of the creditors of such owners, although such assignees have been appointed before the act of Congress making the grant. *Comegys* v. *Vasse*, 1 Pet. 193; *Erwin* v. *United States*, 97 U. S. 392; *Williams* v. *Heard*, 140 U. S. 529.

In *Emerson* v. *Hall*, 13 Pet. 409, cited by the plaintiff in error, in which money paid by the United States to the heirs at law, as "the legal representatives of William Emerson," under the act of March 3, 1831, c. 102, 6 Stat. 464, was held not to be assets in their hands for the payment of his creditors, the act, in its title, was expressed to be "for the relief of the heirs of William Emerson, deceased;" and it granted the money as a reward for services, meritorious indeed, but voluntarily rendered by Emerson, not under any law or contract, and imposing no obligation, legal or equitable, upon the government to compensate him therefor; and the money was therefore held to have been received by his heirs as a gift or pure donation.

In the provision of the appropriation act of March 3, 1891, c. 540, concerning the French Spoliation Claims, the words "personal representative" and "legal representative" were used to designate the executor or administrator of the original sufferer; and money awarded by the Court of Claims to such a representative was held by this court to belong to the next of kin, to the exclusion of assignees in bankruptcy, upon the ground that the act expressly so provided. 26 Stat. 897, 908. *Blagge* v. *Balch*, 162 U. S. 439.

The words "legal representatives" or "personal representa-

tives" have also been used as designating executors or administrators, and not next of kin, in acts of Congress giving actions for wrongs or injuries causing death. Act of April 20, 1871, c. 22, § 6, 17 Stat. 15; Rev. Stat. § 1981; act of February 17, 1885, c. 126; 23 Stat. 307; *Stewart* v. *Baltimore & Ohio Railroad*, 168 U. S. 445, 449.

The act of June 4, 1888, c. 348, now before the court, is entitled "An act for the relief of the estate of C. M. Briggs, deceased," and confers upon the Court of Claims "jurisdiction to hear and determine the claim of the legal representatives of C. M. Briggs, deceased," for the proceeds, in the Treasury of the United States, of cotton owned by him. The only conditions which the act imposes upon the right of recovery are that the petition shall be filed in the Court of Claims within two years; that that court shall find that Briggs was in fact loyal to the United States, and that Morehead's assignment of the cotton to Briggs was made in good faith; and that if it shall find that the assignment "was intended only as security to said Briggs for indebtedness, and against contingent liabilities assumed by him for said Morehead, judgment shall be rendered for such portion of the proceeds of said cotton as will satisfy the debts and claims of said Briggs to secure which said assignment was given." The "debts and claims," in this last clause, manifestly include both classes of debts previously mentioned, namely, the direct "indebtedness" of Morehead to Briggs, and the "contingent liabilities assumed by him for said Morehead," including the claims of the defendants in error, specified in the written agreement executed by Briggs contemporaneously with the assignment, and the amount of each of which has been ascertained by the court below.

The act of Congress nowhere mentions heirs at law, or next of kin. Its manifest purpose is not to confer a bounty or gratuity upon any one; but to provide for the ascertainment and payment of a debt due from the United States to a loyal citizen for property of his, taken by the United States; and to enable his executor to recover, as part of his estate, proceeds received by the United States from the sale of that property.

Statement of the Case.

The act is "for the relief of the estate" of Charles M. Briggs, and the only matter referred to the Court of Claims is the claim of his "legal representatives." The executor was the proper person to represent the estate of Briggs, and was his legal representative; and as such he brought suit in the Court of Claims, and recovered the fund now in question, and consequently held it as assets of the estate, and subject to the debts and liabilities of his testator to the defendants in error.

Judgment affirmed.